APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-938

FEDERAL MARITIME COMMISSION AND
UNITED STATES OF AMERICA,
Petitioners

—*v.*—

PACIFIC MARITIME ASSOCIATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 5, 1977
CERTIORARI GRANTED FEBRUARY 28, 1977

Supreme Court of the United States

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INDEX

(The order of the Commission and the decision and judgment of the Court of Appeals were printed in the petition for writ of certiorari and thus need not be reprinted.)

Docket No. 72-48—Federal Maritime Commission

PACIFIC MARITIME ASSOCIATION—COOPERATIVE WORKING ARRANGEMENTS; POSSIBLE VIOLATIONS OF SECTIONS 15, 16 AND 17, SHIPPING ACT, 1916

RELEVANT DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS

9-6-72—Served Order of Investigation to appear in Federal Register. Motion of ILWU to dismiss petition for investigation is denied.

9-12-72—Appeared F.R. Page 18494, Vol. 37, No. 177.

9-11-72— Served notice assigning proceeding to Administrative Law Judge Bryant for hearing and initial decision.

9-18-72—Received notice of appearance of Edward D. Ransom and Robert Fremlin, Lillick, McHose, Wheat Adams & Charles as attorneys for Pac. Maritime Ass'n.

9-21-72—Received Petition of Pacific Maritime Association to Amend Order of Investigation.

10-3-72—Received Reply of H.C. to Petition of PMA to Amend Order of Investigation.

10-6-72—Received Petition of Council of North Atlantic Shipping Associations.

10-13-72—Received Response of Pacific Maritime Association to Hearing Counsel's Reply to Petition.

10-16-72—Received Reply by Port of Seattle to H.C.'s Petition for Severance of Jurisdictional Issues.

10-17-72—Received Joinder in Petition and Response of International Longshoremen's and Warehousemen's Union with Pacific Maritime Association for an amendment of the Commission's Order of Investigation and joins in the response of the Pacific Maritime Association to H.C.'s Reply to said Petition.

DATE	FILINGS—PROCEEDINGS

10-19-72—Served First Supplemental Order Severing Jurisdictional Issues to appear in F.R.
—Appeared F.R. Thurs., Oct. 26, 1972—pg. 22903-22904, Vol. 37, No. 207.

10-25-72—Petition to Intervene granted by Administrative Law Judge to Council of North Atlantic Shipping Associations.

11-1-72—Served Notice of Permission to Intervene (Port of Seattle)

11-13-72—Received Petition of International Longshoremen's Ass'n, AFL-CIO, to Intervene.

12-5-72—Served notice granting permission to intervene to ILA.

12-15-72—Received Memorandum of Port of Seattle on Sec. 15 Jurisdictional Issues (Aff. of Richard D. Ford; Petition for Severance and Stay); Affidavits of Fact and Memorandum of Law of Attorneys for Petitioner Ports; Memorandum and Affidavits of Pac. Maritime Ass'n.

12-18-72—Received Memorandum of Law of Intervenor Council of North Atlantic Shipping Ass'n; Joinder by International Longshoremen's and Warehousemen's Union in the Memorandum submitted by PMA; Memorandum of Law of H.C.; (12-15) Correction to PMA's Legal Memorandum.

12-19-72—Received Memo. of Law on behalf of International Longshoremen's Ass'n, AFL-CIO.

1-12-73—Received Reply Memorandum of Pacific Maritime Association on Jurisdictional Issues and Affidavit of B.H. Goodenough.

1-12-73—Received Reply of H.C. to Memorandum of Law.

1-12-73—Received Reply Memorandum of Port of Seattle.

1-15-73—Received Reply Memorandum of North Atlantic Shipping Associations.

DATE	FILINGS—PROCEEDINGS

1-22-73—Received Memorandum of Law in Rebuttal on Behalf of Petitioner Ports.

1-30-74—Served Second Supplemental Order Consolidating Jurisdictional Issues to appear in F.R.

2-4-74—Appeared F.R. Page 4506, Vol. 39, No. 24.

2-25-74—Served notice granting permission to Wolfsburger Transport-Gesellschaft m.b.H. for leave to intervene.

3-4-74—Served notice reassigning proceeding to Administrative Law Judge Seymour Glanzer.

3-4-74—Received Response of Port of Seattle to Second Supplemental Order Consolidating Jurisdictional Issues.

3-6-74—Received Memorandum of Law of Petitioner Ports in Response to Second Supplemental Order Consolidating Jurisdictional Issues.

3-18-74—Received Response of H.C. to Second Supplemental Order Consolidating Jurisdictional Issues.

4-1-74—Received Reply Memorandum of Port of Seattle in Response to Second Supplemental Order Consolidating Jurisdictional Issues.

4-2-74—Received Reply Memorandum of Law of Pacific Maritime Ass'n in Response to Second Supplemental Order Consolidating Jurisdictional Issues.

4-3-74—Received Response and Supporting Affidavit to Memorandum of Law of PMA and Affidavit of Edmund J. Flynn.

4-5-74—Sent memo. to Commission re responses to first and second supplemental orders; Commission has considered responses to the first supplemental orders.

4-12-74—Received Motion of Council of North Atlantic Shipping Ass'ns for Leave to File a Memorandum of Law to the Reply of Petitioner Ports filed Apr. 1, 1974.

DATE	FILINGS—PROCEEDINGS
1-30-75	Served Report of the Commission. Commission orders that PMA and the International Longshoremen's and Warehousemen's Union and their respective members are made respondents; public hearing to be held before an Administrative Law Judge at a date and place to be determined and announced by presiding judge—Order to appear in Federal Register.
2-14-75	Appeared Page 6823, Vol. 40, No. 32.
2-19-75	Received Petition of PMA to Hold Further Hearing in Abeyance.
3-4-75	Served Judge Glanzer's notice of proceeding held in abeyance pending Judicial Review.

GENERAL DOCKET

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

75-1140

PETITION FOR REVIEW OF ORDER OF THE FEDERAL MARITIME COMMISSION

PACIFIC MARITIME ASSOCIATION, PETITIONER

v.

FEDERAL MARITIME COMMISSION AND UNITED STATES OF AMERICA, RESPONDENTS

COUNCIL OF NORTH ATLANTIC SHIPPING ASSO. PORTS OF ANACORTES, ET AL., INTERVENOR

RELEVANT DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
(L) 2-18-75	4-Petitioner's petition for review of an order of the FMC (m-13) 4-2
(R) 3-28-75	Clerk's order granting the motion of the Council of North Atlantic Shipping Asso. for leave to intervene; counsel for the intervenor may participate in oral argument only to the extent allowable under Rule 12 of the General Rules of this Court
(R) 4-2-75	Clerk's order granting petitioner's motion to consolidate and nos. 75-1140 and 75-1215 are hereby consolidated for consideration on the merits.
(R) 4-8-75	Clerk's order granting motion of the Ports of Anacortes, et al for leave to intervene; counsel for the intervenor may participate in oral argument only to the extent allowable under Rule 12 of the General Rules of this Court

DATE	FILINGS—PROCEEDINGS
(R) 5-7-75	Order per CJ Bazelon granting respondents' motion for leave to have record in no. 75-1140 treated as the record in no. 75-1215 and the Clerk shall indicate on the docket in no. 75-1215 that the record on file in no. 75-1140 is deemed as filed therein
(G) 6-20-75	15-Petitioner's brief (m-19)
(G) 6-20-75	15-Joint Appendix (m-20)
(G) 6-26-75	25-Intervenor's (Council of North Atlantic Shipping Associations) brief (Corrected) (m-24) (OK-DMC)
(G) 8-14-75	15-Intervenor's (Ports of Anacortes, et al.) brief (m-13)
(C) 9-17-75	15-Respondents' brief (m-15)
(R) 2-11-76	Per Curiam order sua sponte, that the parties address this issue by supplemental memoranda to be filed simultaneously not later than February 25, 1976; Wright, McGowan and Tamm, CJ
(C) 2-24-76	15-Petitioner's supplemental memorandum (m-23)
(H) 2-25-76	4-Respondents' supplemental memorandum (m-23)
(C) 2-25-76	25-Intervenor's (Council of North Atlantic Shipping Asso.) supplemental memorandum (m-20)
(K) 2-27-76	Argued before Wright, McGowan and Tamm, CJ; The Court directed counsel for the parties to file supplemental memoranda with the Clerk on or before March 10, 1976
(G) 3-8-76	4-Respondents' supplemental memorandum (m-5)
(G) 3-9-76	15-Petitioner's supplemental memorandum (m-5)
8-27-76	Opinion for the Court filed by Circuit Judge Tamm.
8-27-76	Judgment remanding case to the Federal Maritime Commission for further proceedings. (n)
9-21-76	Certified copy of opinion and judgment issued to the FMC.

GENERAL DOCKET

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

75-1215

PETITION FOR REVIEW OF ORDER OF THE FEDERAL MARITIME COMMISSION

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, PETITIONER

v.

FEDERAL MARITIME COMMISSION AND THE UNITED STATES OF AMERICA, RESPONDENTS

DATE	FILINGS—PROCEEDINGS
(B) 2-28-75	4-Petition for review of an order of the Federal Maritime Commission (m-25) 4-14
(R) 4-2-75	Clerk's order granting the petitioner's in no. 75-1140 motion to consolidate and nos. 75-1140 and 75-1215 are hereby consolidated for consideration on the merits
(R) 5-7-75	Order per CJ Bazelon granting respondents' motion for leave to have record in no. 75-1140 treated as the record in no. 75-1215; and the Clerk shall indicate on the docket in no. 75-1215 that the record on file in no. 75-1140 is deemed as filed therein
(G) 6-20-75	15-Joint Appendix (m-19)
(K) 6-24-75	15-Petitioner's Brief (m-19)
(C) 9-17-75	15-Respondents' brief (m-15)
(K) 11-3-75	15-Petitioner's Reply Brief (m-30)
(R) 2-11-75	Per Curiam order sua sponte, that the parties address this issue by supplemental memoranda to be filed simultaneously not later than February 25, 1976; Wright, McGowan and Tamm, CJ

DATE	FILINGS—PROCEEDINGS
(C) 2-24-76	25-Petitioner's supplemental memorandum (m-20)
(G) 2-25-76	4-Respondents' supplemental memorandum (m-23)
(K) 2-27-76	Argued before Wright, McGowan and Tamm, CJ; The Court directed counsel for the parties to file supplemental memoranda with the Clerk on or before March 10, 1976
(G) 3-8-76	4-Respondents' supplemental memorandum (m-5)
(G) 3-8-76	25-Petitioner's supplemental memorandum (m-5)
8-27-76	Opinion for the Court filed by Circuit Judge Tamm.
8-27-76	Judgment remanding case to the Federal Maritime Commission for further proceedings. (n)

FEDERAL MARITIME COMMISSION

[Served September 6, 1972—
Federal Maritime Commission]

Docket No. 72-48

PACIFIC MARITIME ASSOCIATION—COOPERATIVE WORKING ARRANGEMENTS; POSSIBLE VIOLATIONS OF SECTIONS 15, 16 AND 17, SHIPPING ACT, 1916

ORDER OF INVESTIGATION

The Ports of Anacortes, Bellingham, Everett, Grays Harbor, Olympia Port Angeles, Portland and Tacoma (hereinafter collectively referred to as Petitioners) have filed with this Commission a petition requesting an investigation of agreements, providing for the employment of longshore labor, entered into by the Pacific Maritime Association (PMA) and the International Longshoremen's and Warehousemen's Union (ILWU), and the practices resulting from the implementation thereof. Both PMA and the ILWU have filed replies urging denial of Petitioners' request.

Petitioners, are municipal corporations owning and operating marine terminal facilities in the States of Washington or Oregon. None of the Petitioners is a member of PMA.

PMA is a corporation organized and existing under the laws of the State of California whose membership includes steamship lines, steamship agents, stevedoring companies and marine terminal companies operating at Pacific Coast ports of the United States.

ILWU is an unincorporated association and is the bargaining agent representing longshoremen, marine

checkers and dock workers with related skills, who are employed by the members of PMA at Pacific Coast ports of the United States.

Specifically, the agreement which Petitioners would have the Commission investigate is a so-called Supplemental Memorandum of Understanding No. 4, dated April 25, 1972, which allegedly supplements a master collective bargaining agreement establishing the "hiring halls" which must be utilized by Petitioners to obtain longshore labor. As regards the Supplemental Memorandum, Petitioners explain that:

> Said Memorandum provides, *inter alia*, that a nonmember of PMA must become a party to said agreement for an indefinite duration as a condition to directly employing any member of the joint work force, and that any nonmembers' "separate ILWU contract" must conform to said Memorandum. Any nonmember who fails to conform to the manpower allocation and the referral system of the PMA and ILWU is disqualified from employing any member of the joint work force. Said Memorandum subjects nonmembers to payment of assessments and dues and acceptance of proportional liability as to obligations of the PMA and its member companies, and compels such nonmembers to submit to the labor policies of the PMA as respects strikes and lockouts.

Petitioners submit that the aforementioned Supplemental Memorandum as well as the underlying master collective bargaining contract are "agreements" within the meaning of section 15 of the Shipping Act, 1916, which should be filed for Commission approval pursuant to that section.

Further, Petitioners maintain that the Supplemental Memorandum and the practices contemplated thereby are detrimental to the commerce of the United States, contrary to the public interest, unfair, unjust, discriminatory and unduly prejudicial and violative of sections 15, 16 and 17 of the Shipping Act, 1916 in that they:

> (1) Would permit the PMA and the ILWU to monopolize, dominate and control the business of moving cargo in foreign and interstate commerce from and to the Petitioners' ports, including the handling and storage of such cargo while at such ports.
>
> (2) Would force shippers and consignees to deal with nonmembers of the PMA, including the Petitioners' ports, on terms substantially less advantageous than with members of the PMA, thereby enforcing a concerted boycott by shippers and consignees of such nonmembers. The effect of such boycott would be to make it difficult or impossible for nonmembers, including Petitioners' ports, to remain in business.
>
> (3) Would force Petitioners and others similarly situated to join the PMA in order that the latter could control their activities, including dictating the labor policies of the Petitioners.
>
> (4) Would regulate, dominate and restrain interstate and foreign commerce with respect to moving and storing cargo to be operated and carried out under artificial and noncompetitive conditions.
>
> (5) Would achieve for the PMA an exclusive, preferential and cooperative working arrangement.
>
> (6) Would permit the PMA and the ILWU to control and regulate the marine terminal operations of Petitioners and prevent and destroy competition of the Petitioners with member companies of the PMA.

PMA's response to the petition for investigation denies all but a few unessential allegations contained therein. On the strength of the fact that the ILWU, one of the two contracting parties to the agreements at issue, is not an "other person" within the meaning of section 1 of the Shipping Act, 1916, PMA maintains that "for said reason alone, notwithstanding all other reasons, neither, the [master] agreement nor Supplemental Memorandum . . . is an agreement covered by the Shipping Act nor is either subject to submission, review and/or approval by the . . . Commission pursuant to said Act." Likewise, the ILWU has moved to dismiss the petition for investigation on the grounds that it is not subject to the Commission's jurisdiction and accordingly, the

Commission has no authority over the agreements between it and PMA.

The Commission has considered this petition by these various Northwest ports requesting an investigation of the said collective bargaining contract, and supplemental agreement thereto, and replies filed by PMA and the ILWU, and it is of the opinion that to the extent such "contracts" involve underlying agreements among and between the members of PMA they are within the Commission's jurisdiction and should be made subject to a formal investigation.

THEREFORE IT IS ORDERED, That pursuant to section 22 of the Shipping Act, 1916, (46 U.S.C. 821) an investigation be instituted to determine:

1. Whether the master collective bargaining contract and the Supplemental Memorandum of Understanding No. 4 entered into by PMA and the ILWU embody any agreements between and among the members of PMA, which agreements are subject to the requirements of Section 15 of the Shipping Act, 1916 (46 U.S.C. 814) and should be filed for approval under that section, or whether such agreements otherwise exist;

2. Whether the implementation by PMA and the ILWU of the master collective bargaining contract and Supplemental Memorandum of Understanding No. 4 will result in any practices which will subject any person, locality or description of traffic to undue or unreasonable prejudice or disadvantage in violation of section 16 of the Shipping Act, 1916 (46 U.S.C. 815);

3. Whether the implementation by PMA and the ILWU of the master collective bargaining contract and Supplemental Memorandum of Understanding No. 4 will result in any practice which is unjust or unreasonable in violation of section 17 of the Shipping Act, 1916 (46 U.S.C. 816);

4. Whether any labor policy considerations would operate to exempt these agreements or practices resulting therefrom from any provision of section 15, 16 or 17 of the Shipping Act, 1916; and

IT IS FURTHER ORDERED, That the Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union, and their respective members are hereby made respondents in this proceeding; and

IT IS FURTHER ORDERED, That a public hearing be held before an examiner of the Commission's Office of Hearing Examiners at a date and place to be determined and announced by the Hearing Examiner; and

IT IS FURTHER ORDERED, That notice of this order be published in the *Federal Register* and that a copy thereof and notice of hearing be served upon Petitioners and both the Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union, individually, and on behalf of their respective members; and

IT IS FURTHER ORDERED, That notice of this order and notice of hearing be mailed directly to the Department of Justice, the Department of Labor and the National Labor Relations Board; and

IT IS FURTHER ORDERED, That all future notices issued by or on behalf of the Commission in this proceeding, including notice of time and place of hearing or prehearing conference, shall be mailed to Petitioners, the Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union, individually, and on behalf of their members, and any other person made a party of record to this proceeding; and

IT IS FURTHER ORDERED, That any person other than those named herein who desires to become a party to this proceeding and to participate herein, shall file a petition to intervene in accordance with Rule 5(1) (46 CFR § 502.72) of the Commission's Rules of Practice and Procedure.

FINALLY, IT IS ORDERED, That the motion of the ILWU to dismiss the petition for investigation is denied.

By the Commission.

/s/ Joseph C. Polking
JOSEPH C. POLKING
Assistant Secretary

[SEAL]

BEFORE THE FEDERAL MARITIME COMMISSION

[Received Sept. 21, 1972]

[Caption Omitted]

PETITION OF PACIFIC MARITIME ASSOCIATION TO AMEND ORDER OF INVESTIGATION

Respondent Pacific Maritime Association (PMA) hereby petitions the Commission for an amendment of its Order of Investigation, dated September 6, 1972, on the following grounds:

Concurrently with the filing of this petition PMA filed with the Commission the ILWU-PMA Nonmember Participation Agreement which is the subject matter of this investigation. The agreement was filed for the purpose of obtaining a ruling that it is not subject to Section 15 of the Shipping Act. PMA has also requested a ruling that if it is determined that the agreement is subject to Section 15, the Commission rule that the agreement is within the labor exemption from the Shipping Act adopted in the Commission's decision of August 25, 1972, in *United Stevedoring Corp.* v. *Boston Shipping Ass'n.*, Docket No. 70-3, or that if the agreement is not within said labor exemption, it be approved under Section 15. The same request for a ruling or in the alternative approval has been made with respect to any underlying agreements between all or any PMA members embodied in the ILWU-PMA Nonmember Participation Agreement.

The issue of the approvability of the Nonmember Participation Agreement, or underlying agreements between PMA members and to be embodied therein, is not presently a part of this investigation. However, by virtue of the aforementioned filing of the agreement this issue is now before the Commission for determination. In view of the identity of issues in this investigation and in any consideration of approvability, respondent PMA here-

by requests that the investigation in Docket No. 72-48 be broadened by amending the Commission's Order of Investigation to include a determination by the Commission that if the Nonmembers Participation Agreement or any underlying agreements between PMA members embodied therein are subject to Section 15 and are not within the labor exemption from the Shipping Act, that said agreement or agreements be approved pursuant to Section 15.

Dated: September 19, 1972.

Respectfully submitted,

EDWARD D. RANSOM
ROBERT FREMLIN
LILLICK, MCHOSE, WHEAT, ADAMS & CHARLES

By /s/ Edward D. Ransom
EDWARD D. RANSOM
311 California Street
San Francisco, California 94104
Attorneys for Respondent PMA

BEFORE THE FEDERAL MARITIME COMMISSION

[Received Oct. 3, 1972]

[Caption Omitted]

REPLY OF HEARING COUNSEL TO PETITION TO AMEND ORDER AND PETITION TO SEVER JURISDICTIONAL ISSUES

Respondent Pacific Maritime Association (PMA) requests the Commission to amend its order of investigation served September 6, 1972, by including the issue of approvability of the subject agreements assuming such agreements are found to be subject to section 15 and not within the labor exemption from the Shipping Act, 1916. For the reasons stated herein, Hearing Counsel urge the Commission to deny the petition without prejudice and instead adopt the supplemental order attached hereto severing the purely legal issues of jurisdiction for determination.

The Commission's order sets forth the following issues, i.e., whether agreements relating to the Supplemental Memorandum of Understanding No. 4 must be filed for approval under section 15, whether their implementation would violate sections 16 or 17 of the Act, and whether any labor policy considerations operate to exempt these agreements or practices resulting therefrom from any provision of sections 15, 16, or 17. The issues therefore break down into those relating to jurisdiction and those relating to the practical effect of implementation, i.e. the possible unjust or unreasonable consequences of the agreements and the undue or unreasonable prejudice or disadvantage which might flow therefrom.

Petitioner's desire to include the issue of approvability in the proceeding since the sections 16 and 17 issues already included are by their nature related to that of approvability. In the opinion of Hearing Counsel, however, it would be futile and wasteful to develop an evidentiary record which would fully explore the merits of the subject agreements if the Commisison were to

find that it lacked jurisdiction on the theory that a labor exemption operates to exempt such agreements from the provisions of the Shipping Act, 1916. Before the parties are put to the expense and burden of proving their contentions on the merits of these argeements, we submit, they ought to be informed by the Commission that they would not be wasting their time. Therefore, we submit, the Commission ought to sever the issues relating to jurisdiction and determine them expeditiously in a separate proceeding.

We acknowledge that such proceeding is appropriate only where there are no genuine issues of material fact and the issue to be determined is primarily a matter of law. The status of Supplemental Memorandum No. 4, we submit, with regard to section 15 and the labor exemption depends upon facts which should not be in dispute, such as whether the Memorandum is the product of good-faith collective bargaining, relates to a mandatory subject of bargaining, imposes terms on entities outside the collective bargaining group, and whether the union is acting at the behest of or in combination with non-labor groups. *United Stevedoring Corporation* v. *Boston Shipping Association*, F.M.C. Docket No. 70-3, August 25, 1972, multilith opinion, p. 8.

The primary concern of the protesting ports, we submit, relates not to the facts concerning the collective-bargaining genesis of the agreements but the practical consequences of the agreements as they affect protestants' businesses. Therefore, in the interests of resolving the critical threshhold issues of jurisdiction and application of the labor exemption and of avoiding unnecessary litigation, we urge the Commission to sever the jurisdictional issues from the proceeding for expeditious determination in the same fashion as the Commission has done in a comparable case, i.e., Docket No. 72-51, *New York Shipping Association—NYSA-ILA Man-Hour/Tonnage Method of Assessment; Possible Violation of Sections 15, 16, and 17, Shipping Act, 1916.*

Should it appear upon filing of affidavits and memoranda that, contrary to our expectation, there do exist issues of fact material to the purely legal question of

jurisdiction, the Commission is of course free to refer resolution of such issues to an Administrative Law Judge. No time will have been wasted under such a procedure, since the parties would in all probability have prepared and submitted the same testimony anyway in an evidentiary hearing. On the other hand, if the Commission does not offer the parties an opportunity to obtain expeditious determination of the critical legal issue, they are compelled to litigate factual issues and bear the expense of proving all their contentions in what probably will be a long, involved evidentiary hearing, all of which could be avoided if the Commission finds as a matter of law that the entire matter falls within the so-called labor exemption from section 15.

An appropriate order serving the legal issue for expeditious determination is attached.

Respectfully submitted,

Donald J. Brunner, Director
Bureau of Hearing Counsel

Norman D. Kline
Hearing Counsel

Paul J. Kaller
Hearing Counsel

BEFORE THE FEDERAL MARITIME COMMISSION

[Received Oct. 17, 1972]

[Caption Omitted]

JOINDER IN PETITION AND RESPONSE

Comes now INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION and hereby joins in the Petition of Respondent PACIFIC MARITIME ASSOCIATION for an amendment of the Commission's Order of Investigation and joins in the Response of the Pacific Maritime Association to the Hearing Counsel's Reply to said Petition.

DATED: October 12, 1972.

Respectfully submitted,

GLADSTEIN, LEONARD, PATSEY AND ANDERSEN

By /s/ Norman Leonard
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FEDERAL MARITIME COMMISSION

[Served October 19, 1972—
Federal Maritime Commission]

[Caption Omitted]

FIRST SUPPLEMENTAL ORDER
SEVERING JURISDICTIONAL ISSUES

This proceeding was instituted by Order of Investigation served September 6, 1972, to determine whether a master collective bargaining contract and a Supplemental Memorandum of Understanding No. 4 (Contracts) entered into by the Pacific Maritime Association (PMA) and the International Longshoremen's and Warehousemen's Union (ILWU) embody any agreements between and among the members of PMA, which agreements are subject to the requirements of section 15 of the Shipping Act, 1916; whether the implementation of these Contracts by PMA and the ILWU will result in any practices which are violative of sections 16 and 17 of that Act and, finally; whether there are any labor policy considerations which would operate to exempt such agreements or practices from any provision of the aforementioned sections of the Shipping Act, 1916.

The Commission's investigation was initiated at the request of several Northwest ports * who maintain that the Contracts, providing for the employment of longshore labor, are "agreements" within the meaning of section 15 of the Act which should have been filed for Commission approval pursuant to that section.

PMA has now submitted the PMA-ILWU Supplemental Memorandum of Understanding No. 4 for a de-

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* The Ports of Anacortes, Bellingham, Everett, Grays Harbor, Olympia, Port Angeles, Portland and Tacoma.

termination of its subjectivity to section 15 and, should it be found subject to that section, for its approval. By virtue of the aforementioned filing of the agreement and in view of "the identity of issues in this investigation and in any consideration of approvability", PMA has concurrently filed therewith a Petition requesting that the Commisison amend its Order of Investigation in this proceeding to include as an issue for determination the approvability of the PMA-ILWU Supplemental Memorandum and any underlying agreements embodied therein.

In reply to this Petition, Hearing Counsel have suggested that the question of Commission jurisdiction over the subject agreements be severed from this investigative proceeding for an expeditious determination. This Petition is well taken. The issues relating to possible prejudicial, discriminatory, or detrimental effects resulting from implementation of the subject agreements by their nature require resolution on the basis of a fully developed evidentiary record. However, the purely legal question regarding jurisdiction of the Commission over such agreements pursuant to section 15 may not involve genuine issues of material fact and, consequently, may be determinable on the basis of affidavits of fact and memoranda of law. Should it appear from the affidavits and memoranda that genuine issues of material fact do exist, these can be resolved by an Administrative Law Judge together with the other factual issues set forth in the Commission's Order of September 6, 1972. However, an expeditious decision on the purely legal issue of jurisdiction might result in avoidance of needless litigation. Accordingly, the Commission desires to afford the parties the opportunity of obtaining expeditious determination of the critical threshold issue. In addition, the Commission wishes to consider the question of the subjectivity of the master collective bargaining contract itself, as well as the Supplemental Memorandum and the underlying agreements embodied in both.

THEREFORE, IT IS ORDERED, That the first ordering paragraph of the Commission's Order of September 6, 1972, be amended as follows:

1. Whether the master collective bargaining contract and the Supplemental Memorandum of Understanding No. 4 entered into by PMA and the ILWU embody any agreements between and among the members of PMA, which agreements are subject to the requirements of section 15 of the Shipping Act, 1916 (46 U.S.C. 814) and should be filed for approval under that section, or whether such agreements otherwise exist; and whether the master collective bargaining contract and the Supplemental Memorandum of Understanding No. 4 are themselves agreements subject to the requirements of section 15 and should be filed for approval;

• • • •

4. Whether any labor policy considerations would operate to exempt these agreements from the provision of section 15 of the Shipping Act, 1916;

5. Whether any labor policy considerations would operate to exempt the practices resulting from these agreements from the provisions of sections 16 and 17 of the Shipping Act, 1916;

6. Whether the master collective bargaining contract and Supplemental Memorandum of Understanding No. 4 entered into by PMA and the ILWU and any agreements between and among the members of PMA embodied therein should, if found subject to the requirements of section 15 of the Shipping Act, 1916, and found not within any labor exemptions, be approved, disapproved, or modified pursuant to that section; and

IT IS FURTHER ORDERED, That pursuant to section 22 of the Shipping Act, 1916, 46 U.S.C. 821, the first and fourth issues set forth in the first ordering paragraph of the amended Order of September 6, 1972, relating to application of section 15 to the subject agreements and operation of labor policy exemptions, be severed from the proceeding for expeditious determination by the Commission; and

IT IS FURTHER ORDERED, That there appearing to be no material issues of fact in dispute with regard to the purely jurisdictional issues arising under section 15, this phase of the proceeding shall be limited to the submission of affidavits and memoranda of law, replies, and oral argument. Should any party feel that an evidentiary hearing be required, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this phase of the proceeding, and why such proof cannot be submitted through affidavit. Requests for hearing shall be filed on or before November 3, 1972. Simultaneous affidavits of fact and memoranda of law shall be filed by all parties no later than the close of business November 3, 1972. Reply affidavits and memoranda shall be filed by all parties no later than the close of business November 13, 1972. An original and 15 copies of affidavits of fact, memoranda, and replies are required to be filed with the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Copies of any papers filed with the Secretary should also be served upon all parties hereto. Time and date of oral argument if requested and/or deemed necessary by the Commission will be announced at a later date; and

IT IS FURTHER ORDERED, That notice of this order be published in the *Federal Register* and that a copy thereof and notice of hearing be served upon Petitioners and both the Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union, individually, and on behalf of their respective members; and

IT IS FURTHER ORDERED, That notice of this order and notice of hearing be mailed directly to the Department of Justice, the Department of Labor and the National Labor Relations Board; and

IT IS FURTHER ORDERED, That all future notices issued by or on behalf of the Commission with regard to this phase of the proceeding shall be mailed to Petitioners, the Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union, individually, and on behalf of their members, and any other person made a party of record to this proceeding; and

IT IS FURTHER ORDERED, That any person other than those who are parties to Docket No. 72-48 who desires to become a party to this proceeding and participate herein, shall file a petition to intervene in accordance with Rule 5(1), 46 CFR 502.72, of the Commission's Rules of Practice and Procedure; and

IT IS FURTHER ORDERED, That the proceedings before the Presiding Administrative Law Judge be stayed pending determination of the severed issues by the Commission.

By the Commission.

/s/ Francis C. Hurney
FRANCIS C. HURNEY
Secretary

[SEAL]

BEFORE THE FEDERAL MARITIME COMMISSION

[Received Nov. 13, 1972]

[Caption Omitted]

PETITION OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, TO INTERVENE

Your Petitioner, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, (ILA) respectfully represents that it has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I. That Petitioner is an unincorporated association (labor organization) with its principal place of business at 17 Battery Place, Borough of Manhattan, City and State of New York.

II. Petitioner and its affiliated Locals are parties to collective bargaining agreements with Employer-Associations and Employers in the steamship and stevedoring business covering ports from Searsport, Maine, to Brownsville, Texas, Puerto Rico, the Great Lakes and Canada.

III. The collective bargaining agreements, as aforesaid, cover the terms and conditions of employment of Petitioner's members who are engaged in longshore work in the various ports covered by said agreements, including wages, hours, contributions to various benefit and pension plans, working conditions, holidays, vacations, guaranteed annual income, containerization and LASH (lighter-aboard-ship operations).

IV. The collective bargaining agreements in effect between Petitioner and the various Employer-Associations

and Employers are in many respects analogous to the collective bargaining agreement in effect between the Pacific Maritime Association (PMA) and the International Longshoremen's and Warehousemen's Union (ILWU). The petition, which seeks an investigation pursuant to Section 22 of the Shipping Act of a collective bargaining agreement between labor and management, effects the interests of Petitioner. It is the position of Petitioner that the collective bargaining agreement involved in the petition of Ports of Anacortes, etal, and the collective bargaining agreements to which your Petitioner herein is a party, are neither subject to the Shipping Act of 1916 nor to the jurisdiction of this Commission.

V. Your Petitioner and the New York Shipping Association, Inc. (NYSA), an association of Employers with whom Petitioner has a collective bargaining agreement have filed a joint petition for a declaratory order that the collectively bargained assessment agreement between ILA and NYSA is not subject to the Shipping Act.

VI. Because of the similarity in the agreements between PMA and ILWU (the subject of this proceeding) and the various ILA collective bargaining agreements, any determination in this proceeding may have an adverse effect on the collective bargaining agreements to which the Petitioner is a party.

WHEREFORE, Petitioner, having a substantial interest in the matters before the Commission, respectfully requests leave to intervene and be treated as a party herein at all stages of the proceeding.

Dated: New York, N.Y.
November 2, 1972

Respectfully submitted,

GLEASON & MILLER

/s/ Thomas W. Gleason
THOMAS W. GLEASON
A member of the firm
Attorneys for Petitioner,
International Longshoremen's
Association, AFL-CIO
1450 Broadway
New York, N.Y. 10018

BEFORE THE FEDERAL MARITIME COMMISSION

[Received Dec. 15, 1972]

[Caption Omitted]

AFFIDAVIT OF FACTS RELATIVE TO
SEGREGATED ISSUE OF JURISDICTION

STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

I, ALEX L. PARKS, being first duly sworn upon oath depose and say: I am one of the attorneys for the petitioner ports in the above entitled proceeding and make this affidavit on behalf of said ports.

As a part of my duties as one of the attorneys for the petitioner ports, I have carefully reviewed the entire notes kept by one or more of the members of the negotiating committees for the ILWU and the PMA during the negotiations between those two organizations for the period November 16, 1970 to and including February 8, 1972 during which time the said parties discussed various aspects of Supplemental Memorandum of Understanding No. 4.

The information contained in said notes is relevant to the issues in this proceeding and bears on the questions of (1) whether or not the subject of the Supplemental Memorandum was a mandatory bargaining item and has any intimate relationship with wages, hours and working conditions, and (2) whether the Supplemental Memorandum was the subject of good faith bargaining or, to the contrary, was entered into at the behest of one party to the negotiations upon another party to the negotiations.

Said notes are preceded by the following explanation:

> "No stenographic notes are kept on ILWU negotiations. The following is dictated from longhand notes taken during the meeting. While the statements contain direct quotations, essentially they are para-

phrased accounts of what was said by the individuals indicated."

The substance of said notes, as they relate to the foregoing issues, are summarized as follows:

November 16, 1970 Session—First Meeting

Article XVI of the ILWU Contract Demands, attached to the notes of said meeting, provided as follows:

"The contract to provide that PMA will accept all fringe benefit contributions from any employer, whether or not such employer is a member of the PMA."

December 7, 1970 Session—Second Meeting

At the meeting, the PMA delivered a letter, dated December 7, 1970 to Mr. Bridges and his Committee. Paragraph XVI of that letter contained the following demand:

"The Employers propose that all applicable Sections of the Agreement be amended to eliminate nonmember participation under any provisions of the Agreement unless they are not permitted by law to become members of the Association. Further, the Employers Agreement be amended as of July 1, 1971 to exclude nonmember participation."

With respect to such demand, the following colloquy occurred at the meeting:

Bridges: We intend to do this. Explain what you mean on item XVI.

Goodenough: So far as the Employers are concerned, we want all those who participate to be PMA members. Otherwise, we don't want any participating in the benefits.

December 9, 1970 Session—Third Meeting

During the meeting, the following colloquy occurred:

Goodenough: (Reading from list) Travel time and transportation has always been negotiated locally. On port authorities who are not PMA members, what is your intent?

Bridges: The local would make the agreement. We can do this now. You have nothing to say about it.

Goodenough: Have you taken into consideration our position.

Bridges: Yes. Any agreements negotiated would be the same. They would be covered by the basic agreement. They would be no better, no worse. They would participate in all the benefits.

December 10, 1970 Session—Fourth Meeting

During the meeting the following colloquy occurred:

Bridges: Are you saying that local rules should not conflict with the Coast Agreement?

Goodenough: Yes.

• • • •

Goodenough: On item 5, travel time and transportation, there is no need to change the present policy. These matters have always been handled at the local level. On item 6, Port Authority Agreements, we technically have no control over what the Union negotiates with someone who is not a PMA member. However, the Union doesn't have the right to negotiate something which binds PMA.

Bridges: I understand what you are saying. We don't propose to commit you without your approval. We haven't figured out how to bind you as yet, but we will.

Goodenough: How are you going to do it?

Bridges: There are many ways.

February 3, 1971 Session—Sixth Meeting

During the meeting the following colloquy occurred:

Goodenough: When you are talking public docks and work jurisdiction are you talking about section 1 of the Agreement?

Bridges: Yes, with some enlargements.

Ward: Another example is where a third party sets up a business and no longshoremen are used and no PMA employers are involved.

Goodenough: There are bona fide industrial docks. These are not in question. We then have the aluminum operation where no PMA member is involved. Where do we fit in that picture?

Bridges: The ship will be barred from other cargo operations. It will have to deadhead out.

Goodenough: Then PMA member companies cannot use the vessel?

Bridges: No! We know what you are leading to. The hell with the courts and the NLRB actions.

February 4, 1971 Session—Seventh Meeting

During the meeting the following colloquy occurred:

Bridges: On Page 18, on the fringe benefits, what do you mean by "unless such nonmember is prohibited by law . . .?"

Goodenough: For example, there are laws governing port authorities which prohibit them from joining PMA. There is also the military.

Bridges: Explain what you mean by amending agreements to exclude nonmember participation.

Goodenough: We have supplemental plans today that allow use of ILWU labor and payments into various funds. It is our position that if they don't belong to the "Employers' Union" then they cannot participate in any of the benefit plans and this will apply to all non-PMA members.

At the meeting, the PMA representatives presented a further draft of proposals, entitled PMA Draft No. 4-A. Article XVI, entitled Fringe Benefit Contributions, repeated the proposal or demand set forth above with respect to the December 7, 1970 Session.

February 18, 1971 Session—Eleventh Meeting

At the meeting, the following colloquy occurred:

Bridges: We will put the freight forwarders and consolidators out of business. We will double handle the cargo and you pay the bill. We will force the others into line.

Goodenough: It is fine to say these things, but let's figure out what we are going to do toward working out an agreement.

Bridges: You keep pointing to competition from non-PMA members. These operations are going to be shut down and this will include Sea-Land. We are going to put the nonmembers out of business.

• • • •

Goodenough: We have a list of things the East Coast has as, for instance, no skill differentials, steady men, and lots of other "goodies".

Bridges: Make us an offer and include all these items. We plan to handle the non-PMA companies after we have a PMA agreement. Switch it around if you wish, and we will handle non-PMA companies first.

March 12, 1971 Session—19th Meeting

During the meeting, the following colloquy occurred:

Bridges: Here's what we have in mind. We realize there are many complications. We are talking about longshore work beyond Section 1 as described. You are saying the cargo is delivered and PMA has no control. There are variations which include involvements with Port properties. These should be handled at the local level.

Goodenough: You are saying to us that, when the stevedore is finished and somebody else takes control, then it should become a local matter and you would deal with the party doing work outside of the agreement without it hurting PMA operations. What if the local party is a non-PMA member?

Bridges: It could be a PMA member or non-PMA member. We simply get rid of the problem here and deal with it locally.

Goodenough: You can only be talking about a non-PMA member.

Bridges: If it is a PMA member doing the work we are talking about we would negotiate with him.

Goodenough: If a PMA member releases control, then your problem is with the non-PMA member.

Ward: The key to this is the idea that you release control of the cargo while it is on your premises, and then others do the work we are talking about. In a sense, you subcontract.

Goodenough: We don't subcontract.

• • • •

Bridges: We want to correct this by changing the language so as to avoid subcontracting. Port authorities are involved. We want to get it down to a local level and handle it there. We are only dealing with the terminal operation.

There then followed a discussion which is not reported.

March 26, 1971 Session—Twenty-Third Meeting

During the meeting, the following colloquy occurred with respect to the proposal of PMA that the problem of jurisdiction be handled by way of a guaranteed annual wage:

Goodenough: We think our proposal is the only way to handle the issue. There is little significance in the number of forwarders and consolidators containers.

Bridges: We are concerned with your statement about breaking up your Union. Explain what you mean. They would all be treated the same—members and nonmembers. Maybe we would charge the nonmembers more. Give me an answer on what you mean by fragmenting your members—this concerns me.

March 30, 1971 Session—Twenty-Fifth Meeting

During the meeting the following colloquy occurred:

Bridges: You want the option and a CFS document.

Goodenough: Our proposal only refers to the Teamster jurisdiction on the dock and likewise the forwarders and consolidators.

Bridges: Why can't we settle that problem on the containers?

Goodenough: There is no way for us to put container stuffers out of business. The consolidators and forwarders are not PMA members.

Bridges: Then there is no hope of an agreement between us.

March 31, 1970 Session—Twenty-Sixth Meeting

During the meeting the following colloquy occurred with respect to container freight stuffing:

Ward: The Fact Finding Team has experience along these lines. Take Matson and PMT, for instance. Are you saying, what do we do with them?

Bridges: Cancel them.

Goodenough: What is the implication?

Bridges: The Teamsters get mad. They follow the work. They won't handle any cargo.

Goodenough: Then what? What assurance can you give us.

Bridges: None. In my judgment, they won't shut down the container operations. You have the weapons if they do.

• • • •

Goodenough: It is the steamship company that controls the containers and he is a nonmember.

Bridges: Under 1.534 the employers agreed that cargo not in shippers' loads would be handled by the ILWU. We gave you six months to cooper this up.

Goodenough: Try Paragraph 1.5(2) under the transition. The nonmember company has a legal right.

Bridges: The best you have on this is up to June 30. The document disappears. Section 1.534 covers.

Goodenough: Why doesn't 1.5(2) cover it? The nonmember company delivers cargo to himself and has a legal right to do this. This is what Sea-Land and U.S. Lines do.

Bridges: The answer is just the same. The way you spell it out is illegal. You will find out on June 30.

• • • •

Goodenough: Our stevedores would like to stop those containers, but they can't.

Bridges: I agree they want the work, but they can tell those people they can't handle those containers.

Goodenough: What about port authorities who employ longshoremen? What about Local 9 vs. Local 19, for instance. Will this continue?

Bridges: No.

Goodenough: If company off dock employs ILWU help—say a consolidator employs Local 13 or Local 10—will these containers go?

Bridges: Yes.

Goodenough: Assume Local 6 and Local 9 signs agreements with nonmembers. Will these containers go?

Bridges: We will straighten that situation out ourselves with our locals. The same goes with the port authorities. We won't bother you with this. You are talking about the Port of Seattle. We are going to give our local the same treatment as the Teamsters.

• • • •

Goodenough: If I can get these zone descriptions from each area, can we discuss on this basis?

Bridges: If port commissions are within the zone area, are they included?

Goodenough: If within the zone area, then I assume yes.

Bridges: All port operations will be included.

Goodenough: If they are a member company, then they will be covered. If it is a nonmember and they have an agreement with you, then you play "footsies".

Bridges: We are not talking about the Port of Seattle, not Peoria or Chicago.[1]

Goodenough: Then we can talk constructively regarding the zone concept?

Bridges: Yes.

Goodenough: Then I understand, (1) in port operations where the problem is between two ILWU segments, you will handle and (2) where member companies have agreements and they are terminated they will move to the ILWU and there is no relief on the IBT; on nonmembers with CFS operations, they must come under the terms of our CFS agreement and, in the instance of nonmember steamship companies, they are to be told by the PMA stevedore that their containers cannot be handled.

Bridges: I assume you are talking about problems on the ninety days' cancellation. We don't want you to do anything illegal.

Ward: We told you earlier that what we would do with nonmember steamship companies. We won't work them.

April 8, 1971 Session—Thirtieth Meeting

At the meeting, the PMA submitted a revised proposal dated the same date. Article XVI relating to fringe benefit contributions contained the same language as earlier proposals; i.e., eliminating nonmember participation under any provisions of the agreement unless such nonmember is prohibited by law from becoming a member of PMA. Also, amending all supplemental agreements

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(1) As it appears in the minutes. The third word in the first line—"not"—should probably be "now".

to the Coast Agreement to exclude nonmember participation on and after the effective date of the new agreement.

In the colloquy which occurred relating to the fringe benefits, the following was stated:

Loveridge: On the fringe benefits, what is the reason?

Goodenough: We don't want non-PMA members sharing in the "goodies".

June 3, 1971 Session—Thirty-Fourth Meeting

In the meeting, the following colloquy occurred:

Goodenough: Let's say we made a mistake and we start to work out a CFS agreement that will work. What about the consolidators and forwarders?

Bridges: Put them out of business. We'll help you.

June 7, 1971 Session—Thirty-Sixth Meeting

During the meeting, the following colloquy occurred:

Goodenough: On paid holidays, our position is there shall be four paid holidays effective in 1973. On the fringe benefit contributions, our position remains the same on nonmember participation.

Bridges: What does that mean?

Goodenough: It means that those nonmember companies will have to figure out for themselves how to handle vacations, pensions, and welfare.

Bridges: Could we agree that a nonmember pays a dollar an hour more?

Goodenough: That nonmember is dealing with you—not through a PMA member.

Bridges: We agree in principle. Let's find a way to do it legally.

Goodenough: That is spelled out in our April 8 document.

Bridges: This is another way of saying that they all must deal through a PMA member.

Goodenough: Yes. Then his work stops also. If a nonmember is dealing with a PMA stevedore, his work stops. Some do not use a PMA stevedore, and he takes the PMA member's business away. We want that chicanery eliminated. You have fragmented our industry.

At this point the notes contain a parenthetical statement reading as follows:

"(Discussion on Seatrain; nonmember companies' use of dispatch hall.)"

Bridges: You are saying, if we shut things down it wrecks your Union.

Goodenough: Nonmember companies have continued to work during shut downs.

At this point the minutes disclose the following:

"(Discussion)"

Bridges: On this point, we agree in principle. We will have to make up our mind what we do.

August 30, 1971 Session—Forty-Third Meeting

The following colloquy occurred during the meeting:

Goodenough: On Page 12, Item XVI, Fringe Benefit Contributions.

Bridges: How do we do that?

Goodenough: Under the PMA Bylaws, we will offer membership.

Bridges: Put it this way—any contract we reached in the strike will only apply to PMA members. It will not apply to anybody else.

Goodenough: I am not sure what you are saying.

Bridges: We'll only include PMA members in our contract and will not include any non-PMA members without your approval.

Goodenough: Right.

Bridges: So they will still be on strike. The agreement cannot apply to anybody without your approval. We could reach agreement with them at a slight charge. You don't need our permission for this. We see nothing wrong with it.

September 18, 1971 Session—Fifty-Eighth Meeting

In the meeting, the following colloquy occurred with respect to the container stuffing issue.

Flynn: We have the same problem with other ports who are not PMA members, but we have no answer. The easy way would be to force them into PMA.

Bridges: Is that what you propose?

Flynn: No. We are interested in protecting the work opportunity that normally would be under the Coast Agreement. The moving party—meaning you —should propose an answer. Will you give us a proposal?

Bridges: We will think about it.

Flynn: We have gotten involved with lawyers and we need language to protect the work and jurisdiction of longshoremen. It is needed for defense against legal entanglements. Such a preamble should be included in our document—it is not aimed at driving people out of business.

Bridges: We have to be careful of language. Language covering work, yes, but not jurisdiction.

Flynn: Some provision of the agreement could be held illegal. The tax—it is applicable to various kinds of cargo and could be held discriminatory. Would it apply to all cargo?

Bridges: Would that cover Sea-Land? He is a member. Maybe a different tax.

Flynn: Do you mean to tax them less?

Bridges: Possibly. A load inside the zone—do they have the same tax?

Flynn: Yes. Any other questions?

• • • •

Bridges: We have no interest in the tax. We want the guarantee.

September 19, 1971 Session—Fifty-Ninth Meeting

In the meeting, the following colloquy occurred:

Flynn: Do you have any proposal on the Port of Seattle? Give it to us in writing.

Bridges: Yes. We can always double handle.

Flynn: What about the other public docks who are not PMA members?

Bridges: Our agreement with the Port of Seattle is hanging fire.

Flynn: You are more effective with them—they pay no attention to us.

Bridges: At the moment, we have no answers.

September 24, 1971 Session—Sixty-Fourth Meeting

Appended to the minutes of that meeting was a PMA proposal dated 9/24/71 entitled "CFS Supplement". Two paragraphs of that proposal read as follows:

"Outbound cargo in containers stuffed within the port area CFS zone by ILWU labor employed by a nonmember of PMA will not be loaded aboard a vessel by a PMA member, unless such cargo is subsequently unstuffed and restuffed by a PMA member under the terms of the PCLCA or this CFS supplement."

"Inbound cargo in containers shall not move from the dock if destined for unstuffing within the port area CFS zone by ILWU labor employed by a nonmember of PMA, unless such cargo is first unstuffed and restuffed by a PMA member under the terms of the PCLACA or this CFS supplement."

January 11, 1972 Session—Eighty-Second Meeting

At a meeting the following colloquy occurred:

Bridges: On your zone concept didn't you propose double handling for nonmembers?

Flynn: Yes, but we can't have it for our members.

Bridges: For our members we want double handling.

January 31, 1972 Session—Eigthy-Sixth Meeting

At the meeting, the first items of discussion were as follows:

Bridges: We'd like to discuss your demand for your closed shop. We think it's illegal but we think it's all right.

Flynn: There is no consensus on this side of the table that we'll go out on strike for this demand.

(The proposal as to nonmember participation was read). [Although the minutes of the protracted negotiations disclose that written proposals were invariably attached to the minutes of the meetings, in this instance the proposal as to nonmember participation is missing].

Bridges: We agree with that—supplemental agreements.

Flynn: If the supplemental agreements are better, we want the benefit of them.

Bridges: We mean better from our side. We are not against it.

Flynn: Take into consideration the New York case of freight forwarders using non-ILA labor. The court said it was proper for the New York Shipping Association to deny that company membership.

Bridges: I think we are talking about no nonmembers would be party to our funds.

Flynn: That's what we propose. Each company would be a member unless by law they can't join our association. By supplemental agreements we mean supplement to the plans.

Bridges: I assume you still have an escape clause for members. Now nonmembers under your proposal would have to become members.

Flynn: We'll give them a ninety day grace period. They can sign a letter of intent.

Bridges: If we sign an agreement with a non-PMA company that is the same or better than the one we negotiate and we do it right now, we would

have to have a clause in that agreement saying they will join PMA.

Flynn: And by joining PMA they would be bound by agreement with you.

• • • •

Flynn: And to join our Union they have to abide by our agreements.

Bridges: You've always said no cheaper deals.

Flynn: We've always said they should not be inconsistent with our contract.

• • • •

Bridges: Let's say sixty days or no contract unless they join your Union.

Flynn: If an employer wants to participate in the functions they have to join.

Bridges: What's the penalty if they don't?

Flynn: They would not be under our funds—welfare, pensions or vacation plan or be able to use the dispatch hall.

Bridges: How do we enforce that? It gets down to compulsory unionism. I promised the grain companies to explore this subject. If we sign up tomorrow, we could say unless they join PMA within thirty days that contract would be cancelled.

Flynn: We can't tell you what to do or a way to get around it. We would look at the agreement and if it is not inconsistent with ours we would admit that company. If we had not yet reached agreement with you, we would table their membership application until we did.

February 6, 1972 Session—Eighty-Ninth Meeting

During the meeting, the following colloquy occurred:

Flynn: Let's go over the other major items. We still have retroactivity and economic items remaining for discussion. Now the major items that are non-economic are (1) manning—LASH sh and RO-

RO; (2) clerks' jurisdiction; (3) PMA nonmember participation proposals; and (4) steady skilled men (being discussed at the local level).

• • • •

Bridges: We said that if the Union follows a principle then we would make you whole. What's your nonmember proposal mean?

Flynn: We want the grain elevators to join PMA.

Bridges: We agree that this contract won't cover grain ships until they join PMA.

• • • •

Bridges: On your distressed ports we will accept as written. On all the other items let's negotiate until Wednesday night, then if no agreement we will go to the arbitrator, but it won't hold up a settlement.

Kagel: Let's list them.

Bridges: IRS, grievance machinery, stop-work meetings, high-piling, industrial docks, nonmember participation, pending lawsuits, protection against dispatch call lawsuits, manning, clerks' jurisdiction, union's scope of work (industrial docks).

February 8, 1972 Session—Ninety-First Meeting

At the meeting, Mr. Kagel, the arbitrator, stated as follows: "I request that we have a subcommittee available this afternoon for two purposes: (1) To go over all agreed documents and (2) Begin going over the non-economic items. We can do this today and tomorrow and I now find I can do it on Thursday and Friday, if necessary."

Immediately following the February 8, 1972 meeting, a press conference was held at which time Mr. Kagel announced that the ILWU and PMA negotiating committees had reached agreement on all economic issues. The statement also stated that certain specific non-economic issues will be mediated and if necessary, arbitrated by Sam Kagel.

The non-economic issues having included PMA nonmember participation proposals, it must be assumed that either the nonmember participation agreement was reached by mediation or, possible arbitration by Mr. Kagel.

Dated this 8th day of December, 1972.

/s/ Alex L. Parks
ALEX L. PARKS

Subscribed and sworn to before me this 8th day of December, 1972.

/s/ Shirleen R. Cason
Notary Public for Oregon
My Commission Expires: 3/23/76

BEFORE THE FEDERAL MARITIME COMMISSION

[Received Dec. 15, 1972]

[Caption Omitted]

AFFIDAVIT OF FACTS RELATIVE TO SEGREGATED ISSUE OF JURISDICTION

STATE OF OREGON)
)
COUNTY OF MULTNOMAH)

I, MILTON A. MOWAT, being first duly sworn upon oath depose and say: I am the Manager, Regulatory Affairs, of the Port of Portland, one of the petitioner ports. I make this affidavit on behalf of all of the petitioner ports in the interest of expedition and for the convenience of all parties concerned.

The matters set forth in this affidavit were supplied to me, at my request, by the cognizant officials of each individual port, for incorporation in this affidavit on behalf of all petitioner ports.

The relevant data is set forth for each petitioner port in the alphabetical order of such petitioner ports.

Geographical Location of Petitioner Ports

Port of *Anacortes*:

Approximately the westerly one-quarter of Skagit County, Washington with the port facilities being located on Fidalgo Island primarily within the City of Anacortes, Washington.

Port of *Bellingham*:

Whatcom Creek Waterway, City of Bellingham; Bellingham International Airport, northwest of Bellingham; South Bellingham; and Blaine, Washington Small Boat Harbor.

Everett:

Port Gardner Bay, bounded principally by Priest Point on the north near Marysville to Chenault Beach, near Paine Field on the south.

Grays Harbor:

Co-extensive with Grays Harbor County, Washington, comprising 1,910 square miles.

Olympia:

Co-extensive with the boundaries of Thurston County, Washington, at the southern end of Puget Sound.

Port Angeles:

Co-extensive with the boundaries of Clallam County, Washington.

Portland:

Co-extensive with the boundaries of Multnomah County, Oregon.

Tacoma:

Co-extensive with the boundaries of Pierce County, Washington with its principal facilities being located in the Tidal Estuary of the Puyallup River within the boundaries of Fife, Washington and the City of Tacoma.

Principal Facilities of the Petitioner Ports

Port of *Anacortes*:

Two ocean terminals, one water cargo berth plus several storage warehouses, a small boat marina, two utility class airports, an international ferry terminal leased to the State of Washington Ferry System, together with various parcels of land leased for commercial and industrial uses. The Port also owns equipment for cargo handling operations including lift trucks, a mobile crane, pallet boards and miscellaneous equipment.

Bellingham:

North terminal, consisting of berths A and B end to end 1,500 feet long; berth B equipped with two 50-ton capacity rail-mounted, gantry cranes, track length 510′. Together with a barge-mounted 60-ton floating crane. Water depth at berths A and B are 34 feet mean low water. Rail barge transfer facility, 3-track span with direct connection to Burlington Northern Railway with switching facilities to the Milwaukee Road. Also, a 50,000 square foot transit shed space and 90,400 square foot sprinkled transit and warehouse space.

South terminal consists of one berth 450 long, with a water depth of 50 feet below mean lower low water, together with 118,000 square feet of sprinklered warehouse space together with a Burlington Northern Railway rail connection.

1,000 vessel capacity Squalicum Small Boat Harbor and industrial area with cold storage capacity to 60,000,000 pounds.

Bellingham International Airport:

Small boat harbor at Blaine, Washington with a 500 vessel capacity. The industrial fill at this location holds a varied group of enterprises as well as property for future industrial expansion.

Everett:

Depository for alumina ore shipped from Jamaica, including a specially designed crane unloader, storage facility and load-out complex. Presently under construction, a log back-up storage and wood chip handling facility comprising 17 acres of dredged-fill. Current expansion includes a new concrete pier and proposed marine terminal which, when completed, will encompass over 50 acres of diversified facilities.

Grays Harbor:

Six deep water shipping berths, transit sheds, heavy-duty cranes, and outdoor cargo assembly areas together with associated marinas, an airport, industrial lands, industrial buildings and industrial development districts.

Olympia:

Quay type ocean pier 2,100 feet in length backed by 70,000 square feet of transit sheds and 30 acres of open cargo yards, together with associated cargo handling equipment.

Port Angeles:

Two deep water piers, providing three berths and a dolphin facility which provides two additional berths, together with all necessary associated cargo handling equipment.

Portland:

Marine facilities include three terminals with 22 general and specialized berths capable of handling containers, roll-on, roll-off, general cargo, motor vehicles, liquid and dry bulk commodities, including 1,100,000 square feet of covered area and 3,500,000 square feet of open cargo area to handle in transit cargoes. In addition, 8 storage warehouses for the combined storage capacity in excess of 376,000,000 square feet. The Port also owns and operates large quantities of industrial lands, as well as the Portland International Airport.

Tacoma:

Seven general cargo berths with associated warehouse covered space in excess of one-half million square feet; cold storage facility with approximately 8,000 tons of available storage; two break-bulk container berths with associated warehouse space and 25 acres of container yard facilities; one berth for movement of bulk tallow; two bulk commodity berths, one handling principally import of ore concentrates, and the other handling alumina inbound to a backup storage facility of 150,000 tons; one grain outloading facility, 700 feet in length;

four berths for the handling of logs and other bulk and outside storage; associated cargo handling facilities including seven large cranes and other loading and unloading facilities. Also, a railroad yard facility capable of handling and storing 185 rail cars within the switching yard, plus operating tracks.

Total Investments of Petitioner Ports

Port	Present Investment	Budgeted or Proposed
Anacortes	$4,506,816	$700,000
Bellingham	13,800,000	
Everett	12,000,000	4,300,000
Grays Harbor	13,656,345	6,000,000 plus
Olympia	5,592,423	4,419,000
Port Angeles	4,500,000	570,000
Portland	44,000,000	21,667,000 (marine facilities only)
Tacoma	40,015,011	28,650,000

Tonnage Handled by Petitioner Ports

(Figures are from last available fiscal year)

Anacortes	290,282
Bellingham	506,000
Everett	709,016
Grays Harbor	2,300,000
Olympia	668,887
Port Angeles	866,000
Portland	2,375,008
Tacoma	2,244,593

Total ILWU Payroll for Each Petitioner Port

(Data for last available fiscal year)

Anacortes	$246,242.54
Bellingham	$114,428.13
Everett	$ 60,009.85
Grays Harbor	$363,146.00
Olympia	$190,618.66
Port Angeles	$112,193.09
Portland	$2,994,520.00
Tacoma	$1,491,652.63

SERVICES PERFORMED BY PETITIONER PORTS UTILIZING ILWU PERSONNEL AND IMPACT OF IMPLEMENTATION OF THE SUPPLEMENTAL MEMORANDUM UPON THE RENDITION OF SERVICES

Port of *Anacortes*:

ILWU personnel utilized in servicing of vessels to and from dockside storage facilities, loading railcars and trucks, and performing handling and processing services in and about the warehouses. All cargo handled at the port utilizes ILWU members.

All marine facilities at the port are owned and operated by the port. There are no facilities leased to stevedoring companies or other members of PMA. Stevedoring companies, members of PMA, perform the work of loading and unloading cargo to and from vessels, utilizing ILWU personnel.

Local Contracts. Relates to storing of canned salmon in port's storage warehouses. ILWU workers may be called out on a minimum 4-hour basis to load out one or two trucks requiring not more than one-half day. This deviates from the Coast Agreement requirements and, if eliminated, would cost additional amounts for labor.

Impact of the Supplemental Memorandum:

(1) If the port refuses to execute the Supplemental Memorandum, it would be denied to use of ILWU personnel. The ILWU would not permit any work to be performed directly for the port by non-ILWU personnel. Inability to employ ILWU personnel or non-ILWU personnel would result in the complete closure of the port's facilities. Based on 290,000 tons of cargo during the last fiscal year and applying the accepted benefit figure of $15 per ton to the community, the resultant loss to the community in dollars would be $4,350,000. In addition, the loss of additional payroll to personnel other than ILWU personnel would exceed $200,000.

(2) If the port resorted to a different method of operation by contracting with PMA stevedoring companies to perform the services now being performed by the port directly, it would preclude any decision-making power on the part of the port with respect to its publicly owned facilities and result, as a practical matter, in delegating to such stevedoring companies all rate-making decisions. Inasmuch as the private stevedoring companies are necessarily tied to a profit-making status, this could, and undoubtedly would, result in diverting cargo to other ports where the stevedoring companies could operate more conveniently and economically, and the imposition of stevedoring and handling charges upon shippers and steamship companies which would not reflect properly the cost-of-service of such stevedoring companies. While the concentration of cargo flows in a few, selected ports might achieve certain operating efficiencies, it would result in severe losses to local producers, shippers and manufacturers whose business operations lie within the tributary area of the port.

(3) If the port executes the Supplemental Memorandum, it would entail an abdication of its responsibilities to the public whose monies built the port facilities; delegate to a private organization (the PMA) its legal authority with respect to labor policies and procedures relative to longshore and terminal employees; and would violate state laws governing public port bodies.

Port of *Bellingham*:

ILWU personnel utilized in the usual terminal services associated with moving cargo from a land-based facility to shipside and vice versa, including loading and unloading rail cars and trucks, high-piling cargo for storage, handling of cargo from place of rest on the dock to the ship's gear and vice versa, and the checking of cargo.

All marine facilities at the port are owned and operated by the port. No operational areas or other facilities are leased to other parties. Two locker spaces are rented to PMA stevedoring companies. These spaces are used exclusively for the storage of cargo handling gear. Stevedoring companies, members of PMA, perform the work of loading and unloading cargo to and from vessels, also utilizing ILWU personnel. All longshore and terminaling services in the port are performed by ILWU personnel exclusively.

Local Contracts. None.

Impact of the Supplemental Memorandum:

See, generally, the data set forth above with respect to the Port of Anacortes. Based on 506,000 tons of cargo during the last complete fiscal year, and applying accepted benefit figure of $15 per ton to the overall community, the resultant loss to the community in dollars would be $7,590,000. In addition, approximately 125 direct port jobs, exclusive of ILWU personnel, would be terminated immediately, representing an annual payroll of $1.1 million dollars. Approximately $1.6 million dollars in annual terminal operations revenues would be lost. Such revenues are "new" monies coming into the port district from outside its tributary area to which a substantial multiplier effect must be applied.

ILWU personnel will permit no work to be handled at the port terminals if it relates to cargo handling. The question as to whether or not ILWU personnel would continue loading and unloading ships as employees of PMA stevedoring companies if the port were to hire non-ILWU personnel to perform its terminal services is purely academic. No such arrangement would be tolerated by the ILWU.

Port of *Everett*:

ILWU personnel are utilized in all aspects of loading and unloading vessels at the facilities owned and operated at this port. The major work at the present

time involves loading logs from boom rafts from the water into ships and unloading alumina ore. Two of the six piers in the port district are owned solely by the port, the remainder being owned by private industry. Two of the private concerns have exclusions in using ILWU personnel and are therefore able to use their own personnel in loading vessels.

Local Contracts. None.

Impact of the Supplemental Memorandum:

See, generally, the data set forth above with respect to the Port of Anacortes. The same situation prevails at this port. Based on 709,016 tons of cargo during the last fiscal year and applying the accepted benefit figure of $15 per ton to the community, the resultant loss to the community in dollars would be $10,635,240. In addition, the loss of approximately half of the port's monthly salaried employees would be very substantial.

Port of *Grays Harbor*:

All marine facilities at the port are owned and operated by the port. There are no facilities leased to stevedoring companies or other members of PMA. There are, however, two major terminal operations which handle log cargoes, both of which are owned and operated by private corporations which operate such facilities and the cargo handling operations incident thereto utilizing non-ILWU personnel in this instance the International Woodworkers of America. All cargo crossing the facilities of the port is received, sorted, stored, and handled to shipside by ILWU personnel on direct port payrolls. From the point that the cargo is placed under the cargo hook, it is then handled from that point to stowage in vessels, or from stowage in vessels to the dock alongside, by ILWU personnel in the employ of stevedoring companies who are members of the PMA.

Local Contracts. Longshoremen who are engaged in receiving log cargoes, unloading such cargoes from trucks, and sorting and handling logs in the log yard, work an 8-hour day at straight time. This is a departure from the Coast Agreement practice of 6-hours straight time and 2-hours overtime. Longshoremen also work in the equipment repair shop of the port. The local contract provides for a three shift operation, with the second and third shifts being paid from $.30 to $.55 additional pay per hour as a shift differential rather than being paid time and a half. This is a radical departure from accepted practices under the Coast Agreement. The port also has a special contract relating to a skill rate of $.50 per hour for leadmen, log handling machine operators, boommen, crane operators, forklift operators and certain supervisors who are employed by the port on a permanent basis. These men are ILWU Local #24 personnel and are employed on a steady basis by the port. The benefit to the port is that these men work interchangeably at several skilled jobs but at the same skill rate, allowing for total flexibility. An additional local practice prevails in that the port pays holiday pay and vacation pay directly to the ILWU employees. Holiday pay is not incorporated in the Coast Agreement and direct vacation payments are in contravention to the Coast Agreement. Such payments, however, from the standpoint of the port, have provided a better working climate.

Impact of the Supplemental Memorandum:

See, generally, the data set forth above with respect to the Port of Anacortes. The situation prevailing at this port is identical.

Based on 2.3 million tons of cargo during the last fiscal year, and applying the accepted benefit figure of $15 per ton to the community, if the port is denied the use of ILWU personnel, the resultant loss to the community in dollars would be $34.5 million dollars. In addition, it would mean the complete closure of

the port and the loss of jobs by all port personnel other than those necessary in a mere housekeeping status.

Port of *Olympia*:

ILWU personnel are utilized in all services connected with the transfer of goods between land and water carriers; i.e., terminaling services as distinguished from loading on and off vessels. All cargo handled at the port utilizes ILWU personnel.

All marine facilities at the port are owned and operated by the port. There are no facilities leased to stevedoring companies or other members of PMA. Stevedoring companies, members of PMA, perform the work of loading and unloading cargo to and from vessels, utilizing ILWU personnel exclusively.

Local Contracts. The local contract with ILWU Local #47 calls for the local to furnish cargo handlers in all categories, including non-skilled longshoremen, equipment operators, crane operators, crane maintenance men, foremen and checkers. This agreement conflicts with the Coast Agreement. Under the Coast Agreement, the port would be required to employ members of the ILWU Checkers' Union and the ILWU Foremen's Union, both of which are located in Seattle, Washington. This would require the payment of travel time to and from Seattle, resulting in a considerably higher and discriminatory per hour cost.

Impact of the Supplemental Memorandum:

See, generally, the data set forth above with respect to the Port of Anacortes. The same situation prevails at this port. Based on 668,887 tons of cargo during the last fiscal year, and applying the accepted benefit figure of $15 per ton to the community, if the port is denied the use of ILWU personnel the resultant loss to the community in dollars would be $10,033,305. In addition, the loss of additional payroll to port personnel other than ILWU personnel would exceed $92,000 annually.

Port of *Port Angeles*:

ILWU personnel are utilized in providing handling service, i.e., delivery of cargo from last place of rest to the ship's work. All cargo handled at the port utilizes ILWU personnel.

All marine facilities at the port are owned and operated by the port. There are no facilities leased to stevedoring companies or other members of PMA. Stevedoring companies, members of PMA, perform the work of loading and unloading cargo to and from vessels, utilizing ILWU personnel exclusively.

Local Contracts. Relates to using checkers from the ILWU local rather than obtaining them from the Checkers' Union in Seattle. If this arrangement were terminated by virtue of the Supplemental Memorandum, it would result in additional travel expense and travel pay with respect to importing checkers from the Seattle area.

Impact of the Supplemental Memorandum:

See, generally, the data set forth above with respect to the Port of Anacortes. The same situation prevails at this port. Based on 866,000 tons of cargo during the last fiscal year, and applying the accepted benefit figure of $15 per ton to the community, if the port were denied the use of ILWU personnel, the resultant loss to the community in dollars would be $12,990,000. In addition, the loss of additional payroll to personnel of the port other than ILWU personnel would be approximately $350,000 per annum.

Port of *Portland*:

The port employs three general categories of labor that are ILWU personnel. The dockmen, from ILWU Local #8, load and unload containers, rail

cars, trucks, barges and operate lift-trucks, straddle carriers and cranes. The Local also supplies the mechanics that service, repair and deliver lift machines, cranes, and miscellaneous stevedoring equipment. Men from the Local are also used to act as sweepers and janitors. Local #40, the Clerks and Super Cargo Local supplies the port with all personnel receiving and delivering cargo. Such personnel also perform all of the record keeping necessary to maintain accurate records on the cargo as it crosses the docks and that cargo stored in the port's warehouses. Local #92, the Foreman-Walking Boss Local, supplies the foremen that supervise the longshore gangs. These three locals are the only source of labor which the port uses in its marine terminal operations. Such personnel have sole labor jurisdiction over the movements of cargoes over the public marine terminals operated by the Port of Portland.

The port owns and operates all of the public marine terminals in Portland with two exceptions. These two exceptions are: The Matson Navigation Company lease from the port of approximately five acres of yard area and the preferential assignment of Berth No. 408 which Matson utilizes in handling container ships in the Hawaiian trade; and the Brady-Hamilton Stevedoring Company lease of the Sea-Land Service Dock to load logs for export to the Orient. There are specialized privately owned marine terminal facilities in the Portland area which handle bulk grain, limestone, wood chips, iron ore, salt, fertilizer, and paper products, but there are no other public marine terminal facilities except those owned and operated by the port.

Local Contracts. The port has the privilege of obtaining "self-supervising checkers" from Local #40. It thus has the privilege of reducing the manning complement to only one man to receive and deliver cargo if the work load is at a minimum and the facility must be kept open. This one man can receive and deliver freight by himself without the necessity

of the port having to hire two men; i.e., a supervisor and a checker. Self-supervising checkers are now employed at warehouses #3 and 4 for the distribution of storage cargo. This local arrangement would be terminated if the Supplemental Memorandum is implemented.

Impact of the Supplemental Memorandum:

See, generally, the data set forth with respect to the Port of Anacortes. The same situation prevails at this port. If the port is denied the use of ILWU personnel, and all operations cease over its public marine terminal facilities, the loss of revenue to firms and individuals in direct marine activities in the Portland community would be more than $61 million dollars annually. This figure represents the direct loss of revenue to firms and individuals in maritime activities. It does not include the secondary loss to the community or the losses to exporters and importers that would either be precluded from competing in world markets or be disadvantaged by having to pay higher transportation costs between their markets and more distant ports. In addition, the loss of additional payroll to personnel of the port other than ILWU personnel would exceed $1 million dollars annually.

If the port resorted to a different method of operation by contracting with PMA stevedoring companies to perform the services now being performed by the port directly it would place the stevedoring firms in a position to dictate the terms under which they would be willing to perform. The self interest of the stevedoring companies would prevail, either in the form of higher rates, or in reduced or eliminated services to the detriment of the shipping public. In the port's efforts to promote traffic, it obtains competitive bids from the stevedoring firms on certain movements of containers and bulk commodities. Under the present situation, the port has the option of performing the work itself. It has exercised this

option and has performed the stevedoring services in several instances. This flexibility promotes true competitive bidding.

Port of *Tacoma*:

ILWU personnel are utilized directly by the port in all terminaling operations performed on its facilities, including all car loading and unloading, handling from ship's tackle to place of rest in the warehouse, sorting to conform to bills of lading, recoopering, and all other miscellaneous services performed for the benefit of the cargo, the shipper, and the consignee.

In addition to the 17 ocean berths operated by the port, there are 6 additional berths for interchange of ocean commerce, operated by private organizations. None of these facilities are members of PMA, and obtain their ILWU personnel through the same joint hiring hall. Stevedoring companies, members of PMA, perform the work of loading and unloading cargo to and from vessels utilizing the port's facilities, using ILWU personnel.

Local Contracts. The port has a contract directly with the ILWU local, relating to all of its clerical, maintenance, railroad, watchmen and cleaning crews. It also has a contract with the Teamsters and Operating Engineers for the operation of its cold storage facilities. If the port were denied the use of the ILWU work force, ILWU members employed by PMA members to actually do the loading and unloading work aboard vessels, would refuse to handle cargo which was handled by non-ILWU members that in the past was performed by ILWU members. In short, it would result in complete closure of all port operations.

Impact of the Supplemental Memorandum:

See, generally, the data set forth above with respect to the Port of Anacortes. The same situation prevails at this port. Based on 2,244,593 tons of cargo

during the last fiscal year, and applying the accepted benefit figure of $15 per ton to the community, the resultant loss to the community in dollars would be $36,688,895. In addition, the port employs 174 persons other than ILWU personnel. If the port were closed by the implementation of the Supplemental Memorandum, it would result in the discharge of the majority of these personnel.

DATED this 11th day of December, 1972.

/s/ Milton A. Mowat
MILTON A. MOWAT

Subscribed and sworn to before me this 11th day of December, 1972.

/s/ [Illegible]
Notary Public for Oregon
My Commission Expires: 3/23/76

BEFORE THE FEDERAL MARITIME COMMISSION

[Received Dec. 15, 1972]

[Caption Omitted]

AFFIDAVIT OF RICHARD D. FORD

STATE OF WASHINGTON)
)
COUNTY OF KING) ss.

RICHARD D. FORD, being first duly sworn, upon oath deposes and says that:

STATUS OF AFFIANT

1. My name is Richard D. Ford. I am the Deputy General Manager and Legal Officer of the Port of Seattle, an Intervenor herein. My business address is Post Office Box 1209, Seattle, Washington 98111.

2. In my capacity as General Manager of the Port of Seattle, I have an extensive knowledge of the marine terminal operations of the Port of Seattle. In addition, I have knowledge of marine terminal operations at United States West Coast Ports. I have personal knowledge of the matters contained herein.

3. This affidavit is made pursuant to an order of the Commission served October 19, 1972 severing jurisdictional issues for independent and expeditious determination.

STATUS OF PARTIES

4. The Pacific Maritime Association (PMA) is a multi-employer bargaining unit representing steamship lines, stevedoring companies, and marine terminal operators on the United States Pacific Coast.

5. The International Longshoremen's and Warehousemen's Union (ILWU) represents employees engaged in longshore, marine clerk, and warehouse work on the United States Pacific Coast.

6. The Port of Seattle (Seattle) is a municipal corporation organized and existing under the laws of the State of Washington. The Port exercises public functions as a port district under the provisions of Revised Code of Washington (RCW) Title 53, and as a wharfinger and warehouseman under the provisions of RCW Title 81, Chapter 94. Pursuant to statute, the Port owns and operates both marine terminal facilities and warehouses. It derives its revenue, in part, from wharfage and dockage charges to ocean carriers and others, and from charges made for warehousing services offered to shippers and consignees. The Port of Seattle employs ILWU labor but is not a member of PMA.

7. Contractual agreements between PMA and ILWU generally govern the performance of longshore and marine clerk on the United States Pacific Coast and more particularly at marine terminal facilities owned and operated by the Port of Seattle. Work on the docks at the Port of Seattle is under the exclusive control of the ILWU. The Port of Seattle has independent contracts with ILWU Local 9 (warehousemen) and ILWU Local 52 (checkers). The Port of Seattle hires members of ILWU Local 19 (longshoremen) and ILWU Local 98 (foremen) on a regular basis but without formal contract.

8. Where the Port of Seattle has hired ILWU longshore and marine clerk labor, it has done so on substantially the same terms and conditions as ILWU labor is hired by members of PMA. The Port of Seattle has utilized the services of PMA-ILWU hiring halls for the employment of longshore labor and has made equitable contributions to the maintenance of PMA-ILWU hiring halls and PMA-ILWU pension funds.

STATUS OF PMA-ILWU CONTRACTS

9. Two PMA-ILWU agreements are the subject of this investigation:

a. *The Master Collective Bargaining Contract.* The master collective bargaining agreement is entitled "Memorandum of Understanding" and was entered into between

the PMA and ILWU on February 10, 1972 (hereinafter referred to as the basic agreement). The basic agreement governs the performance of longshore and marine clerk work at West Coast Ports. The agreement was not complete but left certain specific areas subject to later agreements. Among these subjects was the status of non-PMA employers of ILWU labor.

b. *Supplemental Memorandum of Understanding No. 4.* Supplemental Memorandum of Understanding No. 4 is entitled "ILWU-PMA Nonmember Participation Agreement" and was entered into on or about April 25, 1972 (hereinafter referred to as the nonmember agreement). The nonmember agreement was prepared in a form which was separate and apart from the basic agreement and which was to be executed by non-PMA members who employed ILWU labor.

ACTS OF PMA TO COMPEL SEATTLE TO BECOME A PMA MEMBER

10. As will be shown herein, the nonmember agreement is not a bona fide collective bargaining agreement, but rather is, instead, a device designed by PMA to compel independent employers to join PMA or become subject to their regulation. The promulgation of the nonmember agreement is only the latest in a series of actions by PMA to compel the Port of Seattle, and other non-PMA member ports, to join PMA.

11. The PMA has been and continues to be dominated, directed and controlled by ocean carriers, stevedoring companies and other who have their headquarters and large financial investments within the State of California. The voting and other provisions of its organizational agreement and bylaws of the PMA are designed to perpetuate the domination of such members over the policies and affairs of the PMA, no matter how many additional members are admitted. Should the Port of Seattle be forced to join the PMA, the Port of Seattle would consistently be outvoted on matters of concern to it; for example, ocean carriers have one vote for each 50,000 tons of cargo, while port members only have one

vote; 11 of the 15 directors of the PMA are selected by ocean carriers and the other four are selected by the remaining members; 6 of the 7 director members of the PMA Executive Committee must be ocean carrier selectees; and the Board of Directors may by majority vote suspend or expel any member.

12. On December 23, 1970, a letter was sent to the Port of Seattle, among other ports, from PMA, requesting those ports to join PMA. The letter threatened to exclude non-PMA members from the use of PMA-ILWU hiring halls and from participation in PMA-ILWU benefit plans. This threatened action would prevent the Port of Seattle from hiring longshore and marine clerk labor from ILWU Locals 19 (longshoremen) and 52 (checkers). As will be discussed below, such action would seriously disrupt the operation of marine terminal facilities at the Port of Seattle.

13. On January 29, 1971, representatives of PMA visited Seattle for the express purpose of soliciting non-PMA member ports, including Seattle, to join PMA. At a meeting of representatives from Northwest Ports, representatives of PMA again requested that the Port of Seattle become a PMA member.

14. On February 26, 1971, representatives of PMA organized a meeting of Pacific Northwest Ports at Sacramento, California, with the objective of compelling the Port of Seattle, and other ports, to join PMA.

15. In June of 1971, just prior to the commencement of the Pacific Coast longshore strike, I had several telephone conversations with Mr. Ben Goodenough, Vice President of PMA and one of PMA's principal negotiators with the ILWU. Mr. Goodenough again requested that the Port of Seattle join PMA. Mr. Goodenough told me that unless Seattle joined PMA, Seattle could expect to be excluded from the use of PMA-ILWU hiring halls and from the participation in PMA-ILWU benefit plans. Mr. Goodenough made it clear that PMA did not intend to permit a major operating port like Seattle to remain outside PMA.

warehouses unless and until the Port of Seattle

THE CFS AMENDMENT

16. On February 10, 1972, PMA and ILWU executed a Memorandum of Understanding containing a provision at page 25 and numbered paragraph 1.55 of the Container Freight Station Supplement which would have the effect of irreparably harming the business of the Port of Seattle. The subject provision would require that containers destined for non-PMA facilities employing ILWU labor (such as the Port of Seattle) be first unstuffed by a PMA member employing ILWU labor. This provision would not apply, by its terms, to a container destined for a facility operated by a PMA member. The practical effect of paragraph 1.55 (hereinafter referred to as the CFS amendment) was to require the double handling of maritime container cargo destined for Port of Seattle acquiesced to PMA's demands and became a PMA member.

17. On March 9 and 10, 1972, I had telephone conversations with the aforementioned Mr. Goodenough. Mr. Goodenough personally participated in negotiations conducted between the PMA and the ILWU. Mr. Goodenough told me that the CFS amendment was drafted to take care of what was regarded as "the Seattle problem" and the plain inference I drew from my conversation was that the PMA intended to penalize the Port of Seattle so long as Seattle remained outside the PMA.

18. On April 4, 1972, the Port of Seattle instituted an antitrust action against the Pacific Maritime Association, International Longshoremen's and Warehousemen's Union, and their affiliated members and locals for the purpose of enjoining implementation of the CFS amendment. *Port of Seattle* v. *Pacific Maritime Association and International Longshoremen's and Warehousemen's Union, et al., United States District Court, Western District of Washington, Civil No. 214-72C2.* An order has been issued by the Federal District Court for the Western District of Washington restraining the PMA and ILWU from implementing the provisions of the CFS amendment. The case is now awaiting trial.

THE NONMEMBER AGREEMENT

19. On July 24, 1972, the Port of Seattle received a letter from PMA and ILWU under date of July 20, 1972. A copy of the letter is marked "Exhibit A" and attached hereto, and is incorporated herein by this reference as if set forth in full herein. The letter was accompanied by a proposed form of nonmember agreement to be entered into between PMA, ILWU, and the Port of Seattle. The said nonmember agreement is marked "Exhibit B", is attached hereto and is incorporated by this reference as if set forth in full herein.

20. The letter which has been marked "Exhibit A" notified the Port of Seattle that it had until August 19, 1972 to execute the proposed nonmember agreement. The letter further advised that if the Port failed to agree to the joint demands of PMA and ILWU, the Port would be excluded from hiring longshore labor on the docks of the Port of Seattle.

21. The terms of the proposed nonmember agreement limit use of longshore labor (Locals 19, 52 and 98) to PMA members and signatories of the nonmember agreement. (Paragraph 1 of Exhibit B). All separate contracts between the Port and ILWU locals (Locals 9 and 52) become subject to the overall provisions of the nonmember agreement and the basic agreement between PMA and ILWU. (Paragraph 2). A nonmember is required to employ ILWU labor on the same terms as members of PMA (3), and must specifically forfeit any advantage obtained by the employer through collective bargaining (Paragraph 3, note). Nonmembers are required to pay PMA dues, assessments, and to become liable for other obligations imposed upon PMA members (Paragraph 6). A nonmember is required to lock out ILWU members if PMA declares a lockout (Paragraphs 8 and 10). At the conclusion of the existing basic agreement, PMA is entitled to dictate labor policy during contract negotiations (Paragraph 9). The agreement is perpetual; PMA and ILWU must agree on any termination of the obligations imposed upon the nonmember (Paragraph 13).

22. The terms of the nonmember agreement would com-

pel the Port of Seattle to accept labor policy as dictated by PMA. The terms of the agreement are designed so as to make it more onerous to be a nonmember of the association than to be a member. A nonmember, for instance, is required to pay dues, but has no vote in the organization. Furthermore, while a PMA member may resign its membership, a nonmember is bound in perpetuity under the nonmember agreement. In summary, the nonmember agreement is only the latest and most blatent attempt to force the Port of Seattle (and other ports) into joining PMA.

SEATTLE REFUSES TO JOIN PMA

23. After a thorough consideration of the alternatives involved, the Port of Seattle advised PMA and ILWU by letter of August 2, 1972, that it would not accept the terms of the proposed nonmember agreement. A copy of the Port's letter rejecting the ILWU-PMA demands is marked "Exhibit C", attached hereto, and is by this reference incorporated herein as if set forth in full. As is stated in the letter, it is the policy of the Port of Seattle to remain an independent employer of longshore labor. The legislature of the State of Washington has vested in the Port Commission of the Port of Seattle the responsibility for the determination of labor relations policy for the Port. Execution of the nonmember agreement would constitute an unlawful delegation of legislative authority from the Port of Seattle to PMA. The Port of Seattle desires and intends to remain an independent operating Port.

24. As set forth in Exhibit D, the Port of Seattle stands willing to enter into an agreement with PMA which would enable the Port of Seattle to employ ILWU longshore labor on the same terms as it has in the past. The Port of Seattle stands willing to bear its fair share of PMA assessments for contributions to the maintenance of hiring halls, reasonable overhead expenses of PMA, and funding of joint PMA-ILWU employee trust funds.

EFFECT OF DENIAL OF LONGSHORE LABOR

25. If the Port of Seattle is denied access to longshore labor from ILWU Locals 19, 52 and 98, the Port will be forced to immediately shut down the following marine terminal facilities owned and operated by the Port of Seattle: Terminals 20, 37, 90, 91, 102 and 115. The closure of these marine terminal facilities would seriously disrupt the flow of maritime commerce through the Port of Seattle.

26. The Port of Seattle is a leading west coast port for transpacific commerce. The Port has been, is now, and will be pursuing an extensive program for the acquisition of land, the construction of facilities, and the ordering of extensive equipment to handle maritime cargo. In particular, the Port of Seattle has concentrated on the development of containerized general cargo. The book value of the Port of Seattle's investment in marine land, facilities and equipment (including work then in process) in 1971 increased by over $25,000,000.00 to in excess of $137,000,000.00. This increase was due in substantial part to improvements in the Port's container handling capability. The Port has extensive plans for the further utilization and expansion of existing container facilities and for the development of new container facilities. If the Port were required to shut down its marine terminal facilities, there would be a substantial loss in revenue to the Port with an adverse effect to shippers and the public generally who now use and rely on the facilities of the Port of Seattle. It should be noted, in this connection, that marine terminal facilities of the Port of Seattle which are owned by the Port but leased to PMA members would continue to function. The effect of a denial of longshore labor to the Port of Seattle would close marine terminal facilities both owned and operated by the Port of Seattle, which facilities are enumerated above.

27. Denial of the use of longshore labor to the Port of Seattle would have a direct, serious, and adverse effect upon competition in maritime commerce and related industries both at the Port of Seattle and on the west coast of the United States generally. The Port of Seattle

is the largest "operating" port on the United States Pacific Coast. Many port authorities, particularly in California, are mere landlords of marine terminal facilities which are leased to PMA members. While the Port of Seattle leases some marine terminal facilities to PMA members, the Port of Seattle independently owns and operates the terminals which are enumerated in paragraph 25. If the Port of Seattle is denied access to ILWU labor, it will not be able to operate marine terminal facilities. The Port of Seattle may be forced to lease those facilities to PMA members, which would substantially lessen the competition for maritime traffic. If the Port of Seattle were required to close its marine terminals, there would be a substantial adverse effect on commerce and also a lessening of competition. The anticompetitive effect of a denial of access to longshore labor cannot be doubted, but the Port of Seattle stands prepared to offer additional evidence, including statistical information, on the effect of such a denial.

PMA-ILWU NEGOTIATIONS

28. In my capacity as Deputy General Manager and Legal Officer of the Port of Seattle, I have knowledge relating to the course of negotiations between the PMA and ILWU which led to the conclusion of the basic agreement and nonmember agreement. In addition, the Port of Seattle has in its possession, and I have examined, copies of minutes from PMA-ILWU negotiating sessions between November 16, 1970 and February 8, 1972. These minutes provide some evidence as to the intentions of the parties in the execution of both the basic agreement and the nonmember agreement.

29. With regard to the basic agreement, the Port of Seattle has taken the position that the CFS amendment contained at page 25 and numbered paragraph 1.55 is an unlawful attempt by PMA and ILWU to adversely affect the competitive status of the Port of Seattle as an independent marine terminal operator. The basis of Seattle's claim is set forth in full in the Port of Seattle's

Complaint on file in *Port of Seattle* vs. *Pacific Maritime Association and International Longshoremens and Warehousemen's Union, et al.* For reasons stated elsewhere, the Port of Seattle seeks a stay of this Commission proceeding to permit the Port to litigate the legal issues already raised in the context of the Port's lawsuit. In the event, however, that this Commission desires to fully investigate the terms of the basic agreement, the Port of Seattle requests the opportunity to produce evidence relating to the jurisdiction of the Commission over the basic agreement and the lawfulness of the agreement under the Shipping Act. Absent such a Commission determination, the Port of Seattle will defer the introduction of additional evidence relating to the basic agreement.

30. With regard to the PMA-ILWU nonmember agreement, a review of the facts shows that the agreement represents the type of activity which attempts to effect competition under the anti-trust laws and the Shipping Act, 1916.

31. The purpose of the nonmember agreement is to compel independent Ports, such as the Port of Seattle, into becoming PMA members. I have shown above that the PMA has engaged in a concerted effort over the past several years to compel the Port of Seattle to become a PMA member. Implementation of the nonmember agreement would compel the Port to become a PMA member because otherwise the Port would be denied access to the ILWU work force. Thus, the impact of what has been styled a "collective bargaining agreement" will lie not on the parties to the agreement but instead on non-PMA members. Furthermore, implementation of the nonmember agreement will have a direct result in the immediate termination of the use of the ILWU work force by non-PMA members.

BARGAINING NOT IN GOOD FAITH

32. The collective bargaining which led to the nonmember agreement was not conducted in good faith. There was a prior design by PMA members to use the

existence of the collective bargaining process to thrust unprecedented demands upon non-PMA member port authorities. The PMA-ILWU negotiating minutes show that on February 4, 1971, PMA submitted at the negotiating sessions a draft contract which was entitled number 4-A.

Paragraph XVI of that draft (page 18) provides in pertinent part as follows:

> "Amend all applicable sections of current agreement to eliminate nonmember participation under any provisions of the agreement unless such nonmember is prohibited by law from becoming a member of PMA. Amend all supplemental agreements to the Coast agreement to exclude nonmember participation on and after effective date of the new agreement."

The existence of PMA draft 4-A shows that PMA, and not the union, originated the demand for exclusion of nonmembers.

33. In later negotiating sessions, PMA representatives obtained the acquiescence of labor representatives in developing a program which would force nonmembers into joining PMA. On the 58th meeting of negotiators on September 18, 1971, the following dialogue was recorded between Mr. Edward Flynn, representing PMA, and Mr. Harry Bridges, representing the ILWU:

> "Flynn We have the same problems with other Ports who are not PMA members, but we have no answer. The easy way would be to force them into PMA.
>
> Bridges Is that what you propose?
>
> Flynn 'No.' We are interested in protecting the work opportunity that normally would be under the Coast Agreement. The moving party—meaning you —should propose an answer. Will you give us a proposal?
>
> Bridges We will think about it.
>
> Flynn We have gotten involved with lawyers and we need language to protect the work and jurisdiction of longshoremen. It is needed for defense against legal entanglements. Such a preamble should be included in our document—it is not aimed at driving people out of business."

Any fair reading of the dialogue contained above shows that PMA was looking for a device to force non-PMA members into joining PMA, but feared "legal entanglements". Mr. Flynn was suggesting to Mr. Bridges that if demands arose on behalf of the union, and those demands were "included in our document", the anti-competitive purpose of the agreement would be distinguished. Furthermore, PMA had met with failure in its organizing campaign and needed to use the ILWU as a weapon to force nonmember ports into line. This appeared in the next negotiating session, No. 59, which was held September 19, 1971. During that session, the following exchange occurred:

> "Flynn What about the other public docks who are not PMA members?
>
> Bridges Our agreement with the Port of Seattle is hanging fire.
>
> Flynn You were more effective with them—they pay no attention to us."

SUBJECT OF NONMEMBER AGREEMENT

34. The subject of the nonmember agreement is not a proper subject of union concern. The status of non-PMA members is not a mandatory subject of bargaining and is not connected with wages, hours, or other terms and conditions of employment. The ILWU could have no proper concern in whether the Port of Seattle, or other ports, were members of PMA. The Port of Seattle had in the past contributed to the cost of maintaining ILWU-PMA hiring halls and ILWU-PMA pension funds. Insofar as longshore and clerk work is concerned, implementation of the nonmember agreement would not change one iota of the status quo insofar as hiring halls and pension funds are concerned. Instead, the agreement would confer upon PMA a new power which would actually be

detrimental to the interests of the union. In particular, the nonmember agreement requires that participants lock out longshoremen in the event that the PMA declares a work stoppage (paragraphs 8, 9 and 10 of the nonmember agreement). Thus, far from being in a proper area of union concern, the agreement would actually have a detrimental impact upon the union's bargaining position. In short, there is nothing in the nonmember agreement which would necessarily benefit the ILWU and which would cause the ILWU to negotiate for its implementation.

APPLIES TO NONMEMBERS

35. As its very title implies, the ILWU-PMA nonmember participation agreement imposes terms on entities outside the collective bargaining group. It would belabor the obvious to expand upon this point.

MANAGEMENT-UNION CONSPIRACY

36. The ILWU acted at the behest of the PMA in executing the nonmember agreement. The language cited above from the negotiating sessions evidences an attempt by PMA to obtain the cooperation of the union in establishing the nonmember participation agreement. In the negotiating sessions, the ILWU evidenced a willingness to cooperate with PMA to avoid "legal entanglements" in achieving PMA's anticompetitive plans. At an early negotiating session (No. 23) on March 26, 1971, PMA voiced concern that certain other provisions of the basic agreement might bring "nothing but lawsuits". Mr. Bridges replied as follows:

> "You are in a vice. We will get up in court and tell the judge that we forced this upon the Employers. This is not a violation of the Shipping Act. If you want 'insurance' on this, we will give it to you." (Page 5)

ANTICOMPETITIVE EFFECT

37. If the nonmember agreement is not implemented, it will not prejudice any legitimate union concern. Seattle stands ready to enter into a nonmember agreement which would preserve the status quo and guarantee to PMA and ILWU an equitable contribution by the Port of Seattle to PMA-ILWU hiring halls and PMA-ILWU pension funds. Where the nonmember agreement goes beyond those objectives, however, the effect of the agreement is anticompetitive and strikes directly at the major regulatory concerns of this Commission under the Shipping Act, 1916.

NEED FOR EVIDENTIARY HEARING

38. Seattle anticipates that the PMA and ILWU will present affidavits relating to the nonmember agreement which will assert that the nonmember agreement is a bona fide collective bargaining agreement which resulted from good faith negotiation. The Port of Seattle does not have in its possession copies of the negotiating minutes of those negotiating sessions which immediately preceded the execution of the nonmember agreement. Seattle submits that if the Commission is unable to determine on the basis of the information contained in this affidavit that the nonmember agreement is an anticompetitive device subject to the jurisdiction of the Commission under Section 15, Shipping Act, 1916, then the Commission ought to require an evidentiary hearing for the purpose of determining the intent of PMA and ILWU in entering into the nonmember agreement. The Port of Seattle also submits that it is absolutely essential that the parties to this proceeding have the availability of discovery to obtain additional information, including the production of PMA-ILWU negotiating minutes, relating to the course of negotiations between PMA and ILWU immediately prior to the execution of the non-member agreement.

/s/ Richard D. Ford
RICHARD D. FORD

STATE OF WASHINGTON)
)
COUNTY OF KING) ss.

Richard D. Ford, being first duly sworn, on oath, deposes and says: That he has read the foregoing affidavit, knows the contents thereof, and believes the same to be true as stated.

/s/ Richard D. Ford
RICHARD D. FORD

Subscribed and sworn to before me this 14th day of December, 1972.

/s/ Michael B. Crutcher
Notary Public in and for the State of Washington, residing at Seattle.

EXHIBIT "A"

July 20, 1972

[Received Jul. 24, 1972, Executive Dept., Port of Seattle]

Mr. J. E. Opheim, Manager
Port of Seattle
P.O. Box 1209
Seattle, Washington 98111

This is to inform you that each present nonmember who has an ILWU-PMA nonmember participation agreement will be permitted to continue under its present agreement for a period of thirty days from the date of this letter. On this basis each may use the PMA-ILWU joint work force and participate in the several plans involved until August 19, 1972.

Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union have reached agreement on a new ILWU-PMA nonmember participation agreement. By agreement between the parties, all nonmembers who wish to participate in the use of the PMA-ILWU joint work force in the future will be required to participate under the terms and conditions of the enclosed form of Agreement. Therefore, we request that you date and sign the enclosed Agreement (in triplicate) and return the three copies to C. J. Myers, Treasurer, Pacific Maritime Association, P.O. Box 7861, San Francisco, California 94120. The signatures of the International of the ILWU, as well as PMA, will then be obtained and one copy will be returned for your files.

If you do not return the signed copies before August 19, 1972 then your company will no longer be considered as a nonmember participant in the use of this work force, and all the various considerations provided for in the Nonmember Participation Agreement will no longer apply to your company.

There is enclosed a schedule of the current payments for participation, with the effective dates of each, which are the same for members and nonmembers.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION on behalf of itself and all longshore and clerks locals in California, Oregon and Washington

/s/ [Illegible]

/s/ [Illegible]

PACIFIC MARITIME ASSOCIATION
on behalf of its members

/s/ Ed. J. Flynn

EXHIBIT "B"

ILWU-PMA NONMEMBER PARTICIPATION AGREEMENT

The PMA-ILWU jointly registered work force (hereinafter referred to as the "joint work force") exists as a result of the registration process beginning in 1935 under successive Pacific Coast Longshore and Clerks Agreements (herein called "PCLCA") and the Walking Bosses and Foremen's Agreement. These agreements have been between the Pacific Maritime Association and its predecessors (PMA) and the International Longshoremen's and Warehousemen's Union and its longshore, clerks and walking bosses/foremen's locals in California, Oregon and Washington (ILWU). The men in the joint work force have "jobs" in which they work on an interchangeable basis for the many business entities involved in or related to the movement of cargo to and from ships in California, Oregon and Washington. Some of these business entities are not members of PMA. The following provisions apply to such nonmembers of PMA.

1. A business entity not a member of PMA must participate in this ILWU-PMA Nonmember Participation Agreement if it uses men in the joint work force.

2. The nonmember participant's separate ILWU contract must conform with the provisions hereof, and the provisions of the PCLCA governing the selection of men for inclusion in the joint work force.

3. A nonmember participant will share in the use of the joint work force upon the same terms as apply to members of PMA. The nonmember participant shall obtain men, units of men and gangs of men through the allocation system operated by PMA, from the dispatching halls operated jointly by ILWU and PMA. If a nonmember participant obtains men within the joint work force other than through the allocation system or the dispatching system referred to herein, such nonmember participant shall thereafter be disqualified from use of the joint work force, subject to the conditions of paragraph 11 of this Nonmember Participation Agreement.

a. A nonmember participant may obtain and employ a man in the joint work force on a steady basis in the same way a member may do so. When such participant employs a man to work on a steady basis, it shall notify PMA immediately. On request from PMA, each such participant shall furnish to PMA a list of men it is using on a steady basis. Steady men shall participate in the Pay Guarantee Plan in accordance with the rules that are adopted by PMA and ILWU.

b. For purposes of 1.53 through 1.57 of the Container Freight Station Supplement (CFSS) of the PCLCA, a nonmember participant who uses the joint work force at terms and conditions of employment no more favorable to the nonmember participant than those provided under the PCLCA, including the CFSS, may be deemed to be a "member of PMA" insofar as it is so using the joint work force.

Note: If a prospective nonmember participant has an agreement with the ILWU which provides for utilization of the joint work force at terms and conditions of employment more favorable to the nonmember than those provided under the PCLCA, including the CFSS, such nonmember must alter that agreement to conform to the PCLCA, including the CFSS, in order to become a nonmember participant.

4. The nonmember participant shall participate in the ILWU-PMA Pension Plan, the ILWU-PMA Welfare Plan, the PMA Vacation Plans (longshoremen and clerks, and walking bosses/foremen) and the ILWU-PMA Guarantee Plans (longshoremen and clerks/ and walking bosses/foremen) in accordance with the terms applicable to such participation. Such nonmember shall make payments into these Plans at the same rates and at the same times as members of PMA are to make the respective payments. Attached are statements of terms and conditions currently in effect with respect to such participation. Nonmember Participants shall be subject to the same audits as members of PMA.

5. The nonmember participant shall use the PMA central pay system and central records office and must sign the standard forms of participation documents for the

central records office and central pay system. Amounts due with respect to the central pay and central records system shall be paid to PMA at the time and in the manner prescribed for members of PMA.

Note: The hours for which pay is described through the central pay office to any man within the joint work force, with respect to his being used by such nonmember pursuant to the terms hereof, shall be deemed hours of work for a PMA member company for purposes of determining the individual longshoreman's eligibility for vacations, welfare, pensions, pay guarantee, promotion, transfer, advancement in registered status, seniority, and all other aspects of his work history as a member of the joint work force.

6. Each nonmember participant shall pay to the PMA an amount equal to the dues, and assessments, that a PMA member would pay. Payments shall be made at the time the member would pay. Each nonmember participant shall be liable proportionately to meet any obligations of PMA or of the PMA membership with respect to any PMA action in the PMA-ILWU collective bargaining and contracting relationship that is covered by the terms hereof, including obligations accepted by PMA as being imposed by law.

7. If a nonmember participant becomes delinquent under paragraphs 4, 5, or 6 hereof no joint work force workers shall be furnished to the delinquent nonmember.

8. In case a labor dispute arises and there is a stoppage of the work that normally would be done under the PCLCA and the Walking Bosses and Foremen's Agreement, the nonmember participant shall be governed by the labor policy in regard to that work stoppage that is fixed by PMA in compliance with its By-Laws and to which notice thereof is given in writing to the nonmember participant by PMA.

9. Should there be a cessation of work at the end of the contract period of the PCLCA and the Walking Bosses and Foremen's Agreement, or thereafter while negotiations are continuing toward a renewal or substitute contract, the PMA labor policy as to what work shall be done and under what terms and conditions shall

apply to each nonmember participant the same as it applies to PMA members provided written notice thereof is given by PMA to the nonmember participant. The nonmember participant so notified shall accept the PMA labor policy in regard to such situation as its labor policy.

10. A nonmember participant who carries on work during any work stoppage within the PCLCA or the Walking Bosses and Foreman's Agreement contract period or during any post-contract strike or lockout in knowing violation of any labor policy of PMA referred to in paragraphs 8 through 9 hereof shall thereby terminate its right thereafter to obtain any workers from the joint work force. Any hours worked contrary to PMA labor policy during the period of any stoppage, strike or lockout covered by paragraphs 8 or 9 hereof shall not be considered as hours worked for purposes of vacation, welfare, pension, seniority, availability for dispatch, etc.

11. Should any nonmember participant cease to have the right to obtain men through the allocation and dispatching system, such nonmember shall nevertheless continue under a duty to meet all of its obligations based upon its use of the joint work force including accrued obligations for PMA assessments and dues, obligations for retroactive and current assessments for fringe benefits, obligations to meet liabilities under paragraph 7 hereof, and all other obligations with respect to the pay of workers paid through the central pay office during the period of its participation in the use of the joint work force.

12. It is believed that all provisions of this agreement are now lawful, and it is assumed that they will continue to be lawful. Should there at any time be a determination that any portion of this agreement is contrary to law, the remaining provisions shall continue to be binding upon the parties unless ILWU or PMA gives notice of the termination of this entire agreement.

13. The ILWU-PMA Nonmember Participation Agreement shall be binding and continue in effect without a terminal date, unless jointly terminated by the PMA and ILWU. An entity may terminate its participation

only on such terms and conditions as may be mutually agreed to by the PMA, the ILWU and the participant. An entity that terminates its participation shall at such time no longer be eligible to employ men in the joint work force nor to participate in the Pension, Welfare, Vacation and Pay Guarantee Plans existing between ILWU and PMA.

Dated: _____

Agreed to by:

_____

(Participant)

By _____

Approved by
INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, on behalf of itself and all longshore and clerks locals in California, Oregon and Washington

_____

Approved by

PACIFIC MARITIME ASSOCIATION
on behalf of its members

_____

EXHIBIT "C"

PORT OF SEATTLE
P.O. Box 1209
Seattle, Washington 93111

August 2, 1972

Pacific Maritime Association
P.O. Box 7861
San Francisco, California 94120

International Longshoremen's &
Warehousemen's Union
150 Golden Gate Avenue
San Francisco, California 94102

Re: ILWU-PMA Nonmember Participation Agreement

Gentlemen:

The Port of Seattle is in receipt of your letter dated July 20, 1972, together with your proposed form of "ILWU-PMA Nonmember Participation Agreement."

By your cover letter you advised that the Port of Seattle, as a nonmember of the Pacific Maritime Association, is required to enter into the ILWU-PMA Nonmember Participation Agreement before August 19, 1972, or suffer involuntary exclusion from the use of ILWU longshore labor on the docks of the Port of Seattle.

You are aware that the Port of Seattle has traditionally employed members of the ILWU longshore work force and that it is essential to the operation of the Port's marine facilities that such traditional hiring be continued in the future. You are further aware that the Port of Seattle enjoys independent contracts with ILWU Locals 9 and 52 which are currently in full force and effect. The Port of Seattle has always paid its fair share of the cost of PMA hiring halls and contributions to joint PMA-ILWU employee trust funds.

The proposed nonmember agreement restricts the use of ILWU longshore labor solely to participants in the ILWU-PMA Nonmember Participation Agreement. Separate agreements between nonmembers and ILWU locals become subject to the overall terms of the Nonmember Participation Agreement. A nonmember is required to pay PMA dues in the same amount as a PMA member and also becomes financially liable for other PMA obligations. Nonmembers must observe work stoppages ordered by PMA. In summary, the proposed agreement confers upon an nonmember all the responsibilities of PMA members but without the right to vote to determine PMA policy.

The proposed agreement can only be designed to coerce the Port of Seattle, and other affected ports, into joining PMA. The Port of Seattle will not acquiesce in such a demand.

The Port of Seattle does not accept the terms of the proposed nonmember agreement. It is the policy of the Port of Seattle to remain an independent employer of longshore labor. Furthermore, the legislature of the State of Washington has vested in the Port Commission of the Port of Seattle the responsibility for determining labor relations policy for the Port. Execution of the proposed nonmember agreement would effectively delegate to PMA that responsibility. Apart from any other considerations, such a delegation of authority would be in violation of the law of the State of Washington.

The Port of Seattle stands willing to continue in its use of ILWU longshore labor on the same terms as it has in the past. The Port of Seattle will bear its fair share of PMA assessments for contributions to the maintenance of hiring halls, reasonable overhead expenses of PMA, and the funding of joint PMA-ILWU employee trust funds. The Port of Seattle would be willing to formalize those undertakings in a written agreement with PMA and ILWU. But the Port of Seattle cannot and will not delegate to the Pacific Maritime Association its authority to determine matters of labor policy.

This is a matter of vital importance. The Port of Seattle respectfully requests your early response to this

letter. So that there is no misunderstanding, please be advised that in the event PMA and ILWU insist on implementation of the proposed nonmember agreement, the Port of Seattle will have no other option but to avail itself of whatever legal remedies it may have to insure the continued use of ILWU longshore labor and to resist efforts by PMA to coerce the Port into association membership.

Yours very truly,

/s/ Richard D. Ford
RICHARD D. FORD
Deputy General Manager

RDF:mn

BEFORE THE FEDERAL MARITIME COMMISSION

[Received Dec. 15, 1972]

Docket No. 72-48

AFFIDAVIT OF EDMUND J. FLYNN

CITY AND COUNTY OF SAN FRANCISCO)
)
STATE OF CALIFORNIA) ss.

Edmund J. Flynn, being first duly sworn, deposes and says:

I am the president of Pacific Maritime Association. Pacific Maritime Association (PMA) is a maritime employers' collective bargaining association of some 120 steamship operators, terminals, stevedores and related companies covering the entire United States Pacific Coast, excluding Alaska.

After many years of relative peace on the waterfront, representatives of the PMA and the ILWU entered into negotiations for a new contract, the existing contract terminating June 30, 1971. I participated in all of the negotiations. The first official negotiating meeting took place November 16, 1970. Negotiations continued through ninety-one (91) meetings before the Memorandum Of Understanding dated February 10, 1972 was signed. On July 1, 1971, ILWU went on an extended strike.

The Nonmember Participation Agreement was not one of the subjects resolved by the February 10th Memorandum. It was included as a subject which would subsequently be resolved by further negotiation or mediation, and if not so resolved, be submitted to the Coast Arbitrator for decision.

The question of non-PMA members participation in the ILWU-PMA fringe benefit program and any other facets of the agreement between the ILWU and PMA was a matter of arms-length negotiation between the Union and the PMA from the beginning to the end of the fifteen months of negotiations leading to final agreement. At the very first meeting on November 16, 1970 the Union presented a document entitled "Contract Demands" which included the following:

"XVI. *Fringe Benefits Contributions*

The contract provide that PMA will accept all fringe benefit contributions from any employer whether or not such employer is a member of the PMA."

At the second meeting of the negotiating committees held December 7, 1970, PMA presented its response to the ILWU's Contract Demands and PMA's Item XVI, Fringe Benefit Contributions, reads as follows:

"XVI. *Fringe Benefit Contributions.*

The Employers propose that all applicable Sections of the Agreement be amended to eliminate nonmember participation under any provisions of the Agreement unless they are not permitted by law to become members of the Association. Further, the Employers propose that all supplemental agreements to the Coast Agreement be amended as of July 1, 1971 to exclude nonmember participation."

It is apparent from the foregoing that the ILWU and PMA at the outset of the negotiations were at the opposite ends of the pole on the question as to participation by nonmembers in various programs jointly adopted and agreed to by PMA and ILWU. While nonmember participation was brought up from time to time in the course of a long period of negotiations, the parties were more directly concerned with the direct economic issues and, hence, this subject was not fully explored until after settlement of the other issues as I mention above. PMA repeated its same demands in a memorandum dated

April 8, 1971 listing their then current demands and from time to time during the negotiations the demand was repeated in some form.

Just prior to the February 10th settlement both parties presented their views to Mr. Sam Kagel, the Pacific Coast Arbitrator, and as a result of his suggestions and further negotiation the Agreement, Supplement No. 4, the principal subject of this investigation, was agreed to between PMA and ILWU on April 25, 1972.

The historical background relating to the Nonmember Participation Agreement (Supplement No. 4) is pertinent to understanding its purpose. The PMA-ILWU joint workforce has been established since 1935 under a succession of Pacific Coast longshore agreements. The PMA and the ILWU have a jointly established and jointly supported hiring hall where the ILWU members register and from which they are drawn for work assignments. The PMA has established a highly sophisticated and workable central payroll and record keeping system for such employees. Such employees also participate in various fringe benefits negotiated collectively between PMA and ILWU including a pension plan, a welfare plan, vacation allowances program, the prior Modernization & Mechanization Fund, and under the Agreement of February 10th, the Pay Guarantee Plan. A monumental amount of effort by PMA staff and its members, as well as by ILWU has gone into the pension, welfare and vacation programs over a period of at least two decades. From labor's standpoint the fringe benefits constitute a sizeable part of the longshoreman's overall income.

Employers who were not members of PMA and who have negotiated separate contracts with ILWU have been allowed through supplemental participation agreements to participate in these plans and to have the benefit of the hiring hall and the joint workforce. This is an obvious advantage to nonmembers, not only in having available the PMA-ILWU workforce but also having the substantial economic benefit of funded programs involving thousands of employees, rather than to have to establish such pension, welfare and other programs for a very few employees. On the other hand, it has also

created additional administrative burdens to PMA to have nonmembers participate in some joint ILWU-PMA programs but not necessarily in all.

While a nonmember has been thus permitted to have benefits of the efforts of PMA in establishing a joint workforce and to have a choice of the fringe benefits, they have not had to suffer the consequences of labor disputes between PMA and ILWU. As a result, the nonmember while having the advantages of nonmember participation in PMA's fringe benefit programs, has at times been able to obtain men from the PMA-ILWU joint workforce and in fact draw cargo which PMA members would otherwise have loaded or discharged while PMA members are shut down. This creates an obvious competitive disadvantage to PMA members.

From the Union's standpoint there is an advantage in having some of its members able to continue to work for nonmembers when PMA members operations are shut down. On the other hand, as has long been recognized by Mr. Bridges, president of the ILWU, there are advantages to the Union in having the employers unified on a coastwise basis. This has been a goal of the Union as well as PMA.

It was in no sense the objective of PMA in seeking the Union's agreement to the Nonmember Participation arrangement to eliminate any employers of longshoremen on the Pacific Coast or put anyone out of business. Basically the PMA reached the conclusion that the current situation in which nonmembers obtained all of the benefits and had none of the obligations in connection with the PMA-ILWU joint workforce was grossly inequitable, difficult to administer, put the members at a competitive disadvantage and should not continue.

The nonmember employers with which the PMA was most concerned were those stevedoring employers who loaded or discharged cargo using the PMA-ILWU joint workforce and availed themselves of the fringe benefits and PMA services while taking advantage of work stoppages involving PMA. The public ports rarely do stevedoring, do not load and discharge ships themselves and hence do not concern the PMA members and PMA labor

policy in the way the nonmember stevedoring companies do.

PMA clearly desires to have as many employers of longshore labor as possible become members of PMA and to this end from time to time not only the industrial dock organizations but also the public ports have been solicited. But for those who do not choose to be members, the Nonmember Participation Agreement (Supplement No. 4) holds out to nonmember employers the opportunity to have many of the benefits of PMA membership but at the same to incur some of the obligations.

Not only was it not the motive of PMA and ILWU in Supplement No. 4 to put any nonmembers out of business or injure them but also the agreement does not have that effect. In the first place neither joining PMA nor entering into a nonmember agreement are onerous; secondly, ILWU and nonmembers have full freedom to enter into collective bargaining contracts; and thirdly, longshoremen and clerks are available outside the ILWU-PMA joint registered workforce.

There is no agreement between PMA and ILWU that would prevent ILWU from supplying labor to anyone. There is no agreement expressed or implied between PMA and ILWU as to the terms negotiated with a nonmember must be equal or better than those negotiated with PMA. Nor is there any agreement between PMA and ILWU that would require a nonmember stevedoring company, terminal company, public dock or steamship company to employ PMA-ILWU registered longshoremen unless such company desired to participate in the PMA fringe benefits. In the past if the Union and a nonmember negotiated a contract which included PMA's benefits they would have to get PMA's consent to use the PMA administrative machinery for such benefits. In sum, neither ILWU nor nonmembers are restricted in bargaining with each other by the Nonmember Participation Agreement (Supplement No. 4) under investigation.

There are longshoremen and clerks who are members of the ILWU and who are not a part of the PMA-ILWU joint registered workforce. There are also workers

of nonmembers who perform functions of longshoremen and clerks on the Pacific Coast who do not belong to the ILWU. Further, there is nothing to prevent another nonmember starting his own workforce and providing his own fringe benefits.

Thus, any nonmember of PMA who does not choose to sign the Nonmember Participation Agreement or join PMA is not prevented from continuing or beginning any business. The principal difference between the situation before the new Nonmember Participation Agreement (Supplement No. 4) and after it is implemented is that such participating nonmember could no longer pick and choose which part of the total package he desires. He also can no longer have the benefits without concomitant responsibilities.

One of the obligations which petitioners object to is the provisions of Article 6 that the nonmember participant shall pay to the PMA "an amount equal to the dues and assessments that a PMA member would pay." In theory, this provision is imminently fair. Why should PMA members subsidize nonmembers? In practice this provision makes little or no change in the payments now made by nonmembers who use the joint workforce and participate in the fringe benefits. Such a nonmember has always paid (and is still paying since Supplement No. 4 is suspended) manhour dues which helps defray the cost, though not the entire PMA cost, of dispatching hall and administration of the fringe benefit program. The other dues or assessments paid by PMA members are tonnage dues. These dues are paid by the vessel operator if he is a PMA member. If the vessel operator is not a PMA member then the tonnage dues are paid by the stevedoring company. However none of the petitioning ports are stevedores, none of them load or unload ships themselves. So they do not now pay the tonnage dues and they would not pay tonnage dues on signing the Nonmember Participation Agreement.

Supplement No. 4 does require that the nonmember who signs the agreement use the PMA central pay system and central records. There is an assessment to defray the cost. Most nonmembers who use the joint workforce now use the PMA central pay system and central records. It is a bargain. The cost is far less than would be incurred if the nonmember were to undertake the functions of the central pay system and central records on their own. There is an advantage in maintaining complete records and in coordinating payments through PMA's central pay system. In fact, it is a great administrative inconvenience to the longshoremen and to the employer of longshoremen if the employer does not use PMA's central pay system. This is one of the reasons to require its use by those who sign the Nonmember Participation Agreement.

Supplement No. 4 would also require a nonmember who signs the Participation Agreement to abide by PMA's labor policy. Simply stated that means if PMA members are denied use of the hiring hall and denied the use of longshoremen through a strike, nonmembers would agree not to use the hiring hall and not to employ ILWU longshoremen. On the other side of the picture, if PMA determined that its labor policy called for a legitimate lockout and members refused to employ ILWU labor, the nonmembers would do so also. This is a part of the belief by PMA that nonmembers should not be permitted "to have their cake and eat it too." Nor should PMA members be placed at a competitive disadvantage vis-a-vis nonmembers. Some of the examples of what has occurred in the past and which makes this provision necessary and reasonable are outlined in the Affidavit of Mr. Ben Goodenough.

I should like to stress that the Nonmember Participation Agreement in all its aspects has been a frequent subject of discussion and collective bargaining between PMA and ILWU. It directly relates to the typical collective bargaining matters of the mechanics of the use of the hiring hall, distribution of the workforce, availability of the important fringe benefits including pensions, wel-

fare, vacations and pay guarantees, and the orderly administration of such programs.

/s/ Edmund J. Flynn
EDMUND J. FLYNN
President
Pacific Maritime Association

Subscribed and sworn to before me this 14th day of December, 1972.

/s/ [Illegible]
Notary Public

BEFORE THE FEDERAL MARITIME COMMISSION

[Received Dec. 15, 1973]

Docket No. 72-48

AFFIDAVIT OF B. H. GOODENOUGH

CITY AND COUNTY OF SAN FRANCISCO)
)
STATE OF CALIFORNIA) ss.

B. H. Goodenough, being first duly sworn, deposes and says:

My name is B. H. Goodenough. I am Vice President, Shoreside Labor Relations, Pacific Maritime Association where I have been employed for fifteen years. I have been an active participant in all negotiations for collective bargaining agreements between Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union since 1957, and am responsible for employer contract administration of those agreements.

The subject of the participation of nonmember companies and entities who utilize the PMA-ILWU jointly registered workforce has been a matter of concern for both the Union and the employers for many years. The basic concern of the employers hinges around specific problems involving nonmembers. A terse description of the major problems is as follows:

(1) Certain nonmembers have been able to work during periods of strikes and work stoppages when PMA member companies could not work. For example, during the PMA shutdown of the Port of Los Angeles-Long Beach in November and December of 1968, referred to below, National Metals Company at Los Angeles-Long

Beach Harbor continued to work; and during the most recent longshore strike, a company operating in the Puget Sound Area, known as Foss Alaska, continued to employ longshore labor and handle cargo all during the strike.

(2) Certain nonmember companies have been given preference by being able to secure men during gang shortage periods when member companies, who receive men through the allocations procedures, were forced to remain idle or work with less gangs of men than their normal entitlement. This forced idleness and has caused losses to PMA members in vessel operating expenses and in loss of cargo.

(3) Certain nonmembers have been able to arrange with certain International Longshoremen's & Warehousemen's locals for a steady workforce, a privilege not readily granted, if at all, to member companies, thus depriving members of maximum utilization of the PMA-ILWU joint workforce on days when the nonmember has work available. However, if reduced work opportunity occurs in the nonmember entity operation, the nonmember steady men go to the joint dispatching hall and accept work for member companies.

Agreements with nonmembers allowing them to participate in the particular fringe benefits they choose have existed in the West Coast longshore industry since about 1950.

As a result of those listed practices, nonmembers who signed nonmember participation agreements for the various fringe benefits negotiated for the ILWU workforce, and such nonmembers who utilized the joint dispatch halls and Pacific Maritime Associations's central record offices had accrued to them all of the advantages of the collective bargaining agreements and services of Pacific Maritime Association. They suffered none of the unfavorable situations accruing to members when conflict arose between the parties signatory to the collective bargaining agreement, namely, Pacific Maritime Association and the International Longshoremen's & Warehousemen's Union.

Over the years the difficulties arising from the foregoing situations have been the subject of many discussions between the PMA and ILWU at the Coast level, and also have been discussed in formal joint Labor Relations Committee meetings at the local levels.

Certain typical examples will serve to bring the subject into focus as related to the collective bargaining that took place in 1970, 1971 and 1972 on this issue, and resulted in the agreement signed by the parties covering nonmember participation. Such agreement is identified as No. 4 Supplement to Memorandum of Understanding, April 25, 1972. Those examples are as follows:

(1) During the months of November and December, 1968, a dispute arose between PMA and ILWU in the Port of Los Angeles-Long Beach. Jointly employed local area arbitrator handed down a ruling which, by contract, was binding on both parties. The local union refused to abide by the ruling. PMA companies then made a policy decision to close down the port until contract compliance was accomplished. While member companies all were bound by this policy decision, nonmembers continued to work, utilized the PMA-ILWU jointly registered workforce and, in addition, booked cargo that normally would have gone to member companies.

(2) During the months of May and June, 1970, a member of PMA got into a dispute with an ILWU local in the Port of Portland. Again, the area arbitrator handed down a decision. The Union refused to comply. A policy decision, was made to order no longshoremen for ships in that port until the ship involved in the dispute worked in accord with the area arbitrator's ruling. Aside from the time, effort, and expense involved in that case, after a period of no work in that port, the employer involved made a separate deal with the local, resigned from PMA, and then requested that it be permitted to sign nonmember participation agreements for the various fringe benefits and continued to utilize the PMA-ILWU jointly registered workforce and PMA's central records office facilities.

Items of this nature, combined with others of a less dramatic nature resulted in the Board of Directors of

Pacific Maritime Association, passing a resolution, at its regular quarterly meeting on March 11, 1970, which is attached as Exhibit A (it should be noted that the second example stated above occurred after the passage of the attached resolution, but it is an example of the type of problem that has existed and kept repeating itself over a long period of time).

It was recognized by the Board of Directors that the implementation of that resolution could not be done unilaterally by the Association because, in order to put it into operation, a modification of the collective bargaining agreement, and certain supplemental agreements thereto, was required. This called for bargaining with the ILWU. Inasmuch as the then existent agreement had a terminal date of June 30, 1971, it was decided by the Employers that they would seek the necessary contract revisions when the negotiations for the new agreement began. The Union was aware of the passage of this resolution and also was aware that the Association had refused to grant nonmember status to the entity referred to in item (2) immediately preceding, that is the incident which occurred in May and June of 1970.

Though the collective bargaining agreement negotiated in 1966 did not terminate until June 30, 1971, the parties agreed late in 1970, in recognition of the many problems they had to discuss, to open negotiations at an early date. The first meeting between the parties occurred on November 16, 1970 at which time the ILWU presented its contract demands dated 11/6/70 and revised as of 11/13/70, in an eight-page document. In light of their knowledge of the resolution passed by the Board of Directors of PMA (*Exhibit A* attached), and the Association position in regard to the nonmember participation status of the above referred to employer who had resigned from PMA, the Union included as Item XVI in their demands a section headed "Fringe Benefit Contributions" which read as follows:

"The contract to provide that PMA will accept all fringe benefit contributions from any employer, whether or not such employer is a member of the PMA."

Following receipt of those demands, the employers took time to analyze them and the second negotiating session for the new agreement took place on December 7, 1970, at which time the employers gave a written response to the demands that had been submitted by the Union, in the form of a letter addressed to the ILWU, Attention of Mr. Henry Bridges, and signed by B. H. Goodenough. Item XVI of that response dealing with the question of fringe benefit contributions read as follows:

"The employers propose that all applicable sections of the Agreement be amended to eliminate nonmember participation under any provisions of the Agreement unless they are not permitted by law to become members of the Association. Further, the Employers propose that all supplemental agreements to the Coast Agreement be amended as of July 1, 1971 to exclude nonmember participation."

Thus, at the outset of negotiations PMA and the Union proposed entirely opposite treatment of nonmember participation.

There were, during the course of negotiations for the new agreement which lasted from November 16, 1970 until an agreement was signed on February 10, 1972, references to the nonmember participation situation in numerous discussions. I think it is proper to state that there were no definitive negotiations on the subject. The parties were so deeply involved in the issues of guaranteed annual wage, containerization, major changes in the pension plan, and major economic items such as wages and other fringe benefits aside from pensions, that while this item was referred to from time to time in the negotiations, it was never given close analysis and scrutiny. During the latter days of the negotiations, in the second part of the strike which took place early in 1972, the parties called upon the services of Sam Kagel, the permanent Cost Arbitrator for the PMA-ILWU Agreement, to serve as a mediator to see if resolution of the remaining unresolved items could be brought about. This was in the week prior to the final settlement which occurred on February 10, 1972. During those discussions,

with Mr. Kagel present, the parties presented their respective opposing positions on the subject of nonmember participation, and I think it is proper to say that they both interpreted the remarks of the mediator to imply "A plague on both your houses!" The issue was not resolved when the final Agreement was signed, but was included in a list of unresolved items, eleven in number, on which the parties agreed—when they signed the February 10, 1972 Memorandum of Understanding—they would endeavor to resolve by further negotiations or mediation and, if those two processes failed, the ultimate resolution would be placed in the hands of the Coast Arbitrator, Kagel, and his decision would be final and binding.

Thus, following the conclusion of the strike, and the signing of the Memorandum, the parties set out to resolve—through negotiation—the unresolved item just mentioned. Early in the last week of February, 1972, the parties met on this subject and PMA presented to the Union committee a document entitled, "Suggested Approach to Nonmember Participating Agreement Issue," which is attached as *Exhibit B*. The parties discussed this draft document. The Union indicated they would like to have time to study it and prepare a response. The parties met again on February 25, 1972 and the Union responded with a document entitled, "ILWU Response to PMA Suggested Approach to Non-Member Participating Agreement Issue." This is attached as *Exhibit C*.

There then followed a series of meetings between the parties, and a continuing and progressing exchange of documents as they neared resolution. The first of those is attached as *Exhibit D*, entitled, "Supplemental Memorandum Of Understanding—Draft, March 3, 1972." That was followed with another draft dated March 6th, attached as *Exhibit E*, and revision of that document through the process of collective bargaining finally brought about the document which the parties signed, identified as No. 4 Supplemental Memorandum of Understanding, dated April 25, 1972, signed for PMA on behalf of its members by B. H. Goodenough, and for the

International Longshoremen's & Warehousemen's Union by W. T. Ward.

During the course of negotiation on this document, I checked with and received advice and counsel from PMA legal counsel, in order to be assured that the negotiated instrument was a proper document, and it was with affirmative assurance to that effect that I signed Supplement No. 4.

There has been a long history of nonmember participation in the benefits established by FMA and by the joint efforts of PMA and ILWU, and there are valid reasons why an agreement has to be established between the parties covering this important facet of our over-all operation. Some of the reasons of the employers have been detailed in the introductory statements in this affidavit, leading up to that part of the affidavit dealing with the negotiations. This type of agreement is also of benefit to the Union. It certainly serves to the Union's best interests in organizational activities, and in maintaining their over-all jurisdiction for employment covered under the Section 1 of the Pacific Coast Longshore Contract document to be able to provide for PMA-ILWU registered workmen, working for nonmembers, the benefits that have been negotiated for those members with PMA. Anyone familiar with the West Coast labor relations in the maritime industry, as well as outside the maritime industry, is aware that the PMA-ILWU fringe benefit plans on pensions, welfare, and vacations, as well as the PMA services in regard to the administration of the various Trust Agreements arising from those plans, along with the payroll and record keeping services rendered by PMA, give the ILWU employees benefits equal to and in many instances better than provided in other industries.

There is also the advantage to the ILWU that the fringe benefits and the various services rendered by PMA, can be maintained at a lesser cost when 11 to 12 thousand employees are included than would be the fact for a small group of employees for a single employer.

The foregoing are also benefits which inure to the nonmember participating companies.

Therefore, both Pacific Maritime Association and International Longshoremen's & Warehousemen's Union have a basic interest in providing a reasonable solution for nonmember participation. Obviously we had differences of opinion as to how this should be accomplished. This is probably best exemplified by referring to the opening paragraphs of this affidavit, wherein I quoted the Union's initial demand to this issue as opposed to the employers' initial position. Out of this grew the necessity to bargain collectively over the issue and what we did. Both sides in the collective bargaining process made concessions but, when the document was completed, it was the judgment of both parties that each had accomplished some of its objectives and had arrived at a satisfactory solution to a problem which had been a constant source of irritation for both Union and management for many years dating back almost to the establishment of the ILWU-PMA hiring hall in 1935.

Simplistically, the Union, when it negotiates a separate contract with an employer who is not a member of PMA, would like to have employees employed by such nonmembers afforded the same benefits as employees employed by members, but without any obligations. PMA members on the other hand are placed at a competitive disadvantage by letting nonmembers pick and choose fringe benefits on a piecemeal basis and have accrue to them, without paying the full cost, those fringe benefits which they would like to have but permit nonmembers to ride free and clear of any of the normal employer obligations that arise in the labor relations between Union and employer. Further, the PMA members are at a competitive disadvantage where nonmembers enjoying the benefits of the contract can get favored treatment in regard to the utilization of the workforce, the employment of steady men, the privilege of working when members cannot, and even going so far as to take advantage of that latter situation and handle cargo which would otherwise be handled by members during strike or stoppage periods.

There also must be considered in this total situation the fact that nonmember participation is a beneficial thing

to those nonmembers who would like to become involved. As stated above, it gives them the opportunity to participate in the various fringe benefits in a coverage basis including a large number of people at a much lower cost to them. It also affords them the opportunity to have their payrolls processed through PMA and the administration of fringe benefit trusts handled by PMA and the Union signatory to the basic agreement. There is no doubt that utilizing the services offered by PMA is cheaper than the individual nonmember company handling the same things for itself.

From a labor standpoint, we have worked under a coastwise contract for many years and in dealing with the Union in collective bargaining for the entire Coast, the stability of the industry is better assured if all of those who are using the workforce and are operating under the terms of the agreement are in the same camp. The Union operates as an entity, whereas the employers —with the nonmember situation in the status it was prior to the nonmember participation agreement being signed—are forced to operate without assurance that they have the support of all of those who participate in the outcome of the bargaining.

As stated in the resolution (Exhibit A) which was passed by the Board of Directors, the employers sought assurance that "it (the resolution) would provide greater bargaining strength within the Association, as well as greater solidarity to resolve disputes."

There is no doubt that there is solidarity within the Union. With the nonmember company situation unresolved, it is obvious that there is no solidarity among the employers.

/s/ B. H. Goodenough
B. H. GOODENOUGH

Subscribed to and sworn to before me this 14th day of December, 1972.

/s/ [Illegible]
Notary Public

EXHIBIT A to B. H. Goodenough's Affidavit

EXCERPT FROM MINUTES OF REGULAR QUARTERLY MEETING OF BOARD OF DIRECTORS

BARGAINING STRENGTH OF THE ASSOCIATION:

March 11, 1970

The Chairman reported that the Coast Executive Committee recommended to the Board of Directors the adoption of the following resolution in regard to non-members:

"It is hereby resolved by the Board of Directors of PMA that:

"1. Subject to the provisions of Article IV, Section 1 of the PMA By-Laws, membership in PMA is open to any employer who directly or indirectly employs employees represented by unions with whom PMA has collective bargaining relationships. The Board of Directors shall continue to have the power to deny membership to applicants who have a collective bargaining contract that conflicts with any PMA collective bargaining contract and the conflict does not appear to be resolvable.

"2. In the future, any employer who directly employs such employees, and who is not a member of PMA but who is eligible for membership, will not be allowed to share in the use of the facilities and services that PMA operates individually as part of its labor relations activities, or operates jointly with unions in conjunction with its collective bargaining commitments.

"3. PMA will offer membership to each non-member who is now sharing in the use of the aforesaid services and facilities. These non-members who directly employ such employees will be asked to become members within a reasonable period of time and assume the obligations of membership, or to withdraw from any use of these facilities and services."

The Chairman explained the resolution and the purpose for it by stating that it would provide greater bar-

gaining strength within the Association, as well as greater solidarity to resolve disputes.

Considerable discussion then occurred as to the resolution following which it was duly moved, seconded and unanimously carried that the resolution as presented above be adopted.

EXHIBIT B

SUGGESTED APPROACH TO NONMEMBER PARTICIPATING AGREEMENT ISSUE

Basic Problems with Nonmembers

1. Certain nonmember companies have been able to work during periods of strikes and work stoppages when members could not work.
2. Certain nonmembers have been able to secure men during gang shortage periods when member companies who receive men through the allocations procedure were forced to remain idle or work with less gangs or men than their normal entitlement.
3. Certain nonmembers have been able to arrange with the ILWU for a steady work force thus depriving members of maximum utilization of the jointly registered work force on whatever days the nonmember has work available. However, if reduced work opportunity occurs in the nonmember company the nonmember's steady men then go to the joint dispensing hall and accept work for member companies.

In order to solve those basic problems and still permit nonmembers to participate in the various fringe benefit plans and use the joint dispatching halls the following suggestions are submitted.

1. Any nonmember who has signed nonmember participating agreements and who employs a steady work force by arrangement with an ILWU local or locals or the International, from the jointly registered PMA-ILWU work force, shall submit a list of its steady men and effective date of their steady employment to the Pacific Maritime Association. The registered men shown on the list on the date of their employment in such status then become the responsibility of the nonmember employer insofar as pay guarantees are concerned and insofar as work opportunity is concerned for the term of the PCL & CD, i.e., to July

1, 1973. Such men shall be considered as not available to member companies and shall not be dispatched to member companies during the term of the contract. Such men shall not be eligible for payments under the PMA-ILWU Pay Guarantee Plan for the term of the Agreement and their paid hours shall not be included in computing "80% of the average paid hours" in the local as referred to in paragraph 3.2 of the Pay Guarantee Plan.

The nonmember employer of such steady men will not be assessed the determined contribution rate for the Pay Guarantee Plan for its steady employees. However, said assessment will be payable as it applies to men employed on a casual basis by a nonmember. Nonmembers desiring to sign Nonmember Participating Agreement for Welfare, Pension, and Vacations and who comply fully with PMA-ILWU contract provisions in regard to use of joint dispatching halls, Section 8.13, and the vacation plans, Section 7.43 may do so provided they comply with the foregoing provisions in regard to steady men and the Pay Guarantee Plan. Failure to comply shall automatically cancel the Nonmember Participating Agreements for that nonmember company and their steady men will not have future hours counted for fringe benefit plans. Further, there shall be no further dispatch of extra men to that nonmember during the time of the contract and none of the identified steady men of that nonmember shall be eligible for dispatch for the term of the Agreement.

2. Nonmembers who do not employ steady men shall be covered under nonmember participating agreements if they so desire provided,

   (a) All orders for men, units of men, or gangs are placed through the PMA allocation system and such men, units or gangs are dispatched in proper allocation sequence or ordered by PMA allocator. Failure of the nonmember employer or of the joint dispatchers to comply with this rule shall automatically cancel all nonmember participating agreements for involved

nonmember company and that company shall not be permitted use of the joint dispatching hall or the use of the Central Records Office payroll services for the duration of the contract.

3. Should a strike, illegal work stoppage or lockout occur during the term of the Agreement, during which period member companies are not placing orders or the Union is not taking orders in the joint dispatch hall then no nonmember who is signatory to nonmember participating agreements and is using the joint dispatch and the Central Records Office shall be entitled to dispatch of men. If such nonmember works jointly registered men during such a period, all nonmember participating agreements will be cancelled for the term of the Agreement and dispatching hall and Central Records Office utilization will be cancelled during the term of the Agreement. Any hours worked by registered men for such nonmember after such cancellation will not be considered as hours worked under the Agreement and men who work such hours will be disqualified for Pay Guarantee Payments for the term of the Agreement.
4. Nonmember companies who do not employ steady men and who wish to sign nonmember participating agreements will be required to sign a nonmember participating agreement for the Pay Guarantee Plan. Hours worked for such nonmember who remains in compliance with the foregoing rules shall be included in calculation of average paid hours under 3.2 of the Pay Guarantee Plan.
5. If a strike should occur at the termination of the Agreement, nonmembers signatory to nonmember participating agreements shall not work with jointly registered men during the strike. If they do, then their nonmember signatory agreements will not be reinstated when work is resumed and the hours worked during the strike will not be considered as hours worked under the Agreement.
6. PMA member companies shall not serve as payroll agents for nonmember companies for longshoremen, clerks or Walking Bosses/Foremen.

EXHIBIT C

DRAFT—February 25, 1972

ILWU RESPONSE TO PMA SUGGESTED APPROACH TO NON-MEMBER PARTICIPATING AGREEMENT ISSUE

Solution

In order to solve those basic problems as are defined in PMA's SUGGESTED APPROACH and still permit nonmembers to participate in the various fringe benefit plans and use the joint dispatching halls the following suggestions are submitted.

1. Any nonmember who has signed nonmember participating agreements and who employs a steady work force by arrangement with an ILWU local or locals or the International from the jointly registered PMA-ILWU work force shall submit a list of its steady men and effective date of their steady employment to the PMA within 10 days of notice.

The registered men shown on the list in such status then become the responsibility of the nonmember employer insofar as pay guarantees are concerned and insofar as work opportunity is concerned for the term of the PCLCD (Pacific Coast Longshore and Clerk's Document) which expires July 1, 1973. Such men shall be considered as not available to member companies and shall not be dispatched to member companies during the term of the contract except during peak periods of manpower shortage, and then only by mutual agreement of the Joint Port LRC.

Such men shall not be eligible for payments under the PMA-ILWU Pay Guarantee Plan for the term of the Agreement and their paid hours as steady men shall not be included in computing "80% of the average paid hours" in the local as referred to in para. 3.2 of the Pay Guarantee Plan.

The nonmember employer of such steady men will not be assessed the determined contribution rate for the Pay

Guarantee Plan for its steady employees. However said assessment will be payable as it applies to men employed on a casual basis by a nonmember. (Define *casual basis* —week by week?)

Nonmembers desiring to sign Nonmember Participating Agreement for Welfare, Pension and Vacations and who comply fully with PMA-ILWU contract provisions in regard to use of joint dispatching halls, Sec. 8.13, and the vacation plans, Sec. 7.43, 7.44, may do so provided they comply with the foregoing provisions in regard to steady men and the Pay Guarantee Plan. Failure to comply shall automatically cancel the Nonmember Participating Agreements for that nonmember company and their steady men will not have future hours counted for fringe benefit plans. Further, there shall be no further dispatch of extra men to that nonmember during the time of the contract and none of the identified steady men of that nonmember shall be eligible for dispatch for the term of the Agreement unless they shall return to the dispatch hall within 7 days of such cancellation.

2. Nonmembers who do not employ steady men shall be covered under nonmember participating agreements if they so desire, provided,

(a) All orders for men, units of men or gangs are placed through the PMA allocation system where such procedure is now in effect, and such men, units or gangs are dispatched in accordance with section 8.13. Deliberate violation by the nonmember employer or by the joint dispatchers of this rule shall automatically cancel all nonmember participating agreements for involved nonmember company. and that company shall not be permitted use of the joint dispatching hall or the use of the Central Records Office payroll services for the duration of the contract.

3. Should a strike, illegal work stoppage or lockout occur during the term of the Agreement during which period member companies are not placing orders or the Union refuses dispatch from the joint dispatch hall, then no nonmember who is signatory to nonmember participating agreements and is using the joint dispatch and

the Central Records Office shall be entitled to dispatch of men.

If such nonmember works jointly registered men during such a period, all that nonmember's participating agreements will be cancelled for the term of the Agreement, and dispatching hall and Central Records Office utilization will be cancelled during the term of the Agreement. Any hours worked by registered men for such nonmember after such cancellation will not be considered as hours worked under the Agreement, and men who work such hours will be disqualified for Pay Guarantee Payments for the term of the Agreement.

4. Nonmember companies who do not employ steady men and who wish to sign nonmember participating agreements will be required to sign a nonmember participating agreement for the Pay Guarantee Plan. Hours worked for such nonmember who remains in compliance with the foregoing rules shall be included in calculation of average paid hours under 3.2 of the Pay Guarantee Plan.

5. If a strike should occur at the termination of the Agreement, nonmembers signatory to nonmember participating agreements shall not work with jointly registered men during the strike. If they do, except under lawful order, then their nonmember signatory agreements will not be reinstated when work is resumed, and the hours worked during the strike will not be considered as hours worked under the Agreement, except that such reinstatement shall be subject to negotiations by the parties.

6. PMA member companies shall not serve as payroll agents for nonmember companies for longshoremen, clerks or walking bosses/foremen.

7. PMA member companies shall be allowed to stevedore, husband, or otherwise act as agents for nonmember vessel when all cargo handling operations are performed by the ILWU-PMA work force. Nonmember vessels who perform cargo-handling operations with a non-ILWU-PMA workforce shall not be stevedored, husbanded, or serviced in any manner by a PMA member or the ILWU-PMA workforce, unless:

(a) The nonmember vessel shall pay to the JPLRC the full cost of the joint dispatch hall incurred for dispatch of men to such nonmember vessel; and

(b) An additional tax shall be paid on cargo tonnage handled by any non-ILWU-PMA workforce, and use of such tax monies to be determined by the Joint Coast Labor Relations Committee.

8. Nonmember companies who have signed nonmember participating agreements and non-members who desire to sign such nonmember agreements, and are performing cargo-handling operations shall be allowed to continue such cargo handling operations.

EXHIBIT D

SUPPLEMENTAL MEMORANDUM OF UNDERSTANDING

The "Memorandum of Understanding" between the Parties dated February 10, 1972 spells out in Item (D) of "General Provisions Applicable to The Pacific Coast Longshore and Clerks Agreement" a listing of eleven (11) items to be resolved by further negotiation, mediation or arbitration.

This "Supplemental Memorandum of Understanding" is considered as the resolution to Item 9 (a) under the aforementioned Item (D).

The Parties agree that a new form of supplementary agreement covering nonmember employers and their employees will be prepared containing the following provisions.

(1) A definition of a nonmember employer along the following lines:

"A nonmember is a business entity such as a company, corporation, or public port, or port commission, with whom the International Longshoremen's and Warehousemen's Union on behalf of itself or one of its longshore or clerks locals has a separate collective bargaining agreement outside the Pacific Coast Longshore and Clerks Agreement covering work normally considered under the scope, terms, and conditions of the ILWU-PMA Pacific Coast Longshore and Clerks Agreement and utilizing as its work force employees jointly registered by the Parties to the ILWU-PMA Pacific Coast Longshore and Clerks Agreement."

(2) The new supplementary agreement for nonmembers shall include the following provisions.

(a) Participation in all of the supplemental agreements to the aforesaid agreement such as Welfare, Pension and Pay Guarantee Plans as well as the Vacation Plan provided in the aforesaid agreement, and the use of the joint dispatching halls provided for by the Parties to the aforesaid agreements. In addition, this new supplemental agreement shall provide that nonmember com-

panies signing the new Nonmember Agreement shall participate in the PMA Central Records System and be assessed the same manhour and tonnage dues and payroll assessments to support the various services rendered by the Association on behalf of its members as are Association members.

And further, that any future assessments applicable to members provided for under the By-Laws of the Association shall automatically apply to nonmembers who have signed the Nonmember Participating Agreement.

Nonmembers desiring to sign the new Nonmember Participating Agreement shall not be permitted to select from the aforementioned those parts in which they would like to participate but, rather, they shall participate in all or none. If it be the latter, they will not be eligible for nonmember participation nor will they be eligible for utilizaiton of the PMA-ILWU jointly registered work force.

(3) The new Nonmember Participating Agreement shall also include provisions as follows.

(a) A nonmember who has signed the Nonmember Participating Agreement and employs a steady work force by arrangement with an ILWU local or locals, or the International, from the jointly registered PMA-ILWU work force, shall submit a list of its steady men and effective date of their steady employment to the Pacific Maritime Association. The registered men shown on the list on the date of their employment in such steady status then become the responsibility of the nonmember employer insofar as Pay Gurantees are concerned. Such men shall be considered as not available to member companies and shall not be dispatched to member companies so long as they remain as steady employees of the nonmember. However, their paid hours shall be included in computing the various tests under the Pay Guarantee Plan in the applicable port or local.

(b) Nonmembers signing the Nonmember Participating Agreement must comply with the provisions of section 8.13 of the PCL & CA. All orders for men, units of men, or gangs shall be placed through the Pacific Maritime Association Allocations System and such men,

units, or gangs shall be dispatched in proper allocation sequence as ordered by the PMA Allocator. Failure of nonmember employer or of the joint dispatcher to comply with this rule shall automatically cancel the Nonmember Participating Agreement for the involved nonmember.

(c) The Nonmember Participating Agreement should also contain a clause to the effect that, should a strike or lockout occur during the term of the Agreement during which period member companies are not placing orders or the Union is not taking orders in the dispatching hall, then no nonmember who is signatory to the Nonmember Participating Agreement shall be entitled to the dispatch of men. If such nonmember works jointly registered men or casuals during each period, the Nonmember Participating Agreement will be cancelled. Any hours worked by registered men or casuals for such nonmember after such cancellation will not be considered as hours worked under the Agreement and men who work such hours will be disqualified for all fringe benefits.

(e) If a strike should occur at the termination of the Agreement, nonmembers signatory to the Nonmember Participating Agreement shall not work with jointly registered men or casuals during the strike. If they do, their Nonmember Signatory Agreements will not be reinstated when work is resumed, and hours worked during the strike will not be considered as hours worked under the Agreement.

(5) As soon as the Nonmember Participating Agreement form is prepared and agreed to by the Parties, all present nonmember companies signatory to existing nonmember participating agreements will be advised that the Parties have agreed to cancellation of all existing Nonmember Participating Agreements and that those nonmembers signatory thereto will have a thirty (30) day period in which to sign the new Nonmember Participating Agreement. Failure to sign within the stipulated period will preclude prospectively the utilization by nonmembers of any of the PMA-ILWU jointly registered work force and jointly registered men will not be permitted to accept employment with such nonmember companies not signatory to the Agreement unless they choose to accept deregistration and take up new employment.

EXHIBIT E

Draft

March 6, 1972

SUPPLEMENTAL MEMORANDUM OF UNDERSTANDING

The "Memorandum of Understanding" between the Parties dated February 10, 1972 spells out in Item (D) of "General Provisions Applicable to The Pacific Coast Longshore and Clerks Agreement" a listing of eleven (11) items to be resolved by further negotiation, mediation or arbitration.

This "Supplemental Memorandum of Understanding" is considered as the resolution to Item 9 (a) under the aforementioned Item (D).

The Parties agree that a new form of Nonmember Participating Agreement covering nonmember employers and their employees will be prepared containing the following provisions.

(1) A definition of a nonmember employer along the following lines:

"A nonmember is a business entity such as a company, corporation, or public port, or port commission, with whom the International Longshoremen's and Warehousemen's Union on behalf of itself or one of its longshore or clerks locals has a separate collective bargaining agreement outside the Pacific Coast Longshore and Clerks Agreement covering work under the scope, terms, and conditions of the ILWU-PMA Pacific Coast Longshore and Clerks Agreement and utilizing as its work force employees jointly registered by the Parties to the ILWU-PMA Pacific Coast Longshore and Clerks Agreement."

(2) The new Nonmember Participating Agreement shall provide for the following:

(a) The participation in all of the Benefit Plans of the aforesaid ILWU-PMA Agreement such as Welfare, Pension, Vacation, and Pay Guarantee Plans, and the

use of the joint dispatching halls as provided for in the aforesaid ILWU-PMA Agreement.

(b) The participation in the PMA Central Records System.

(c) The assessment of nonmembers of the same man-hour and tonnage dues and payroll assessments to support the various services rendered by PMA as PMA members are assessed. And further, that any future assessments applicable to members provided for under the By-Laws of PMA shall automatically apply to nonmembers who have signed the Nonmember Participating Agreement.

Note: A nonmember who signs the new Nonmember Participating Agreement shall not be permitted to select from the aforementioned those parts in which it would like to participate but, rather, it shall participate in all. A nonmember who does not sign the Nonmember Participation Agreement will not be eligible for utilization of the PMA-ILWU jointly registered work force.

(3) The new Nonmember Participating Agreement shall also provide for the following:

(a) A nonmember who has signed the Nonmember Participating Agreement and employs a steady work force by arrangement with an ILWU local or locals, or the International, from the jointly registered PMA-ILWU work force, shall submit a list of its steady men and effective date of their steady employment to the Pacific Maritime Association. Their participation in the Pay Guarantee Plan shall be in accord with the rules governing that Plan.

(b) Nonmembers signing the Nonmember Participating Agreement must comply with the provisions of section 8.13 of the PCL & CA. All orders for men, units of men, or gangs shall be placed through the Pacific Maritime Association Allocations System and such men, units, or gangs shall be dispatched in proper allocation sequence as ordered by the PMA Allocator. Failure of nonmember employer to comply with this rule shall auto-

matically cancel the Nonmember Participating Agreement for the involved nonmember.

(c) Should a strike or lockout occur that is in violation of section 11.1 of the PCL & CA during the term of the Agreement, no nonmember who is signatory to the Nonmember Participating Agreement shall be entitled to the dispatch of men. If such nonmember works during such period, the Nonmember Participating Agreement will be cancelled. Any hours worked by registered men or casuals for such nonmember after such cancellation will not be considered as hours worked under the Agreement.

(d) If a strike should occur at the termination of the Agreement, nonmembers signatory to the Nonmember Participating Agreement shall not work. If they do, their Nonmember Signatory Agreements will not be reinstated when work is resumed, and hours worked during the strike will not be considered as hours worked under the Agreement.

(5) As soon as the Nonmember Participating Agreement form is prepared and agreed to by the Parties, all present nonmember companies signatory to existing nonmember participating agreements will be advised that the Parties have agreed to replace all existing Nonmember Participating Agreements thirty (30) days from the date of notification. Such companies will be asked to sign the new Nonmember Participating Agreement and advised that, if they have not done so thirty (30) days

from the date of notification, jointly registered men will not be permitted to accept employment with the company until the company signs a Nonmember Participating Agreement.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, on behalf of itself and all longshore and clerks locals in California, Oregon and Washington

_____

Dated: _____

PACIFIC MARITIME ASSOCIATION
on behalf of its members:

_____

BEFORE THE FEDERAL MARITIME COMMISSION

[Received Dec. 15, 1972]

Docket No. 72-48

AFFIDAVIT OF CURT J. MYERS

CITY AND COUNTY OF SAN FRANCISCO)
) ss.
STATE OF CALIFORNIA)

Curt J. Myers, being first duly sworn, deposes and says:

I am Treasurer of Pacific Maritime Association and as such am familiar with all dues, assessments and fringe benefit funding. Our Shoreside Division is financed by a combination of man hour dues and tonnage dues. The principal activities of the Division are: Contract negotiation, day to day contract administration including arbitration and legal services, accident prevention and skills training, joint operation of dispatch halls and joint trusteeship of the fringe benefit trust funds.

Members in the Stevedore/Terminal category pay man hour dues on all labor employed under our collective bargaining agreements and in addition they pay tonnage dues on cargo that they actually load to or discharge from nonmember vessels and on any cargo handled on an FIO basis.

Members in the vessel operator category pay tonnage dues on cargo loaded to or discharged from their vessels.

The Port Authorities in the Northwest, according to PMA's classification, are terminal operators and do not load or discharge vessels and hence do not and will not

under the new participation agreement (Supplement No. 4) pay tonnage dues. The one exception is the Port of Longview which is also a stevedore in that it discharges bulk cargo directly from vessels. The Northwest Port Authorities are and have been paying PMA man hour dues on the labor they employ because they use the joint PMA-ILWU dispatch hall. They also pay into the various PMA-ILWU fringe benefit funds in the same manner as PMA members because they operate under the prior nonmember agreements covering participation in those funds.

The Central Records and Pay Office is financed by payroll dues which are levied upon each payroll processed through that facility. All of the Port Authorities in the Northwest avail themselves of this facility except the Ports of Grays Harbor, Olympia, and Port Angeles. These three ports have minimal payroll volume.

Aside from the exception with respect to minimal activity by the Port of Longview, the Northwest Ports contributions now and on implementation of Supplement No. 4 (the new Nonmember Participation Agreement) is the same. The principal difference is that they now participate in the fringe benefit programs under the terms of their own collective bargaining agreement with the ILWU and they participate voluntarily in the PMA man hour dues program and Central Records Payroll program whereas if they sign the new agreement they will have to take the whole package.

/s/ Curt J. Myers
CURT J. MYERS
Treasurer
Pacific Maritime Association

Subscribed and sworn to before me this 13 day of December, 1972.

/s/ E. A. Phillips
Notary Public

BEFORE THE FEDERAL MARITIME COMMISSION

[Received Dec. 18, 1972]

Docket No. 72-48

AFFIDAVIT OF FRED HUNTSINGER

CITY AND COUNTY OF SAN FRANCISCO)
) ss.
STATE OF CALIFORNIA)

FRED HUNTSINGER, being first duly sworn, deposes and says:

I am a member of the Coast Committee of the International Longshoremen's and Warehousemen's Union (ILWU) and as such actively participated in the negotiations between ILWU and PMA in 1970, 1971 and 1972 resulting in the Memorandum Of Understanding of February 10, 1972 and in Supplement No. 4, the Nonmember Participation Agreement.

Supplement No. 4 (to the Memorandum Of Understanding between ILWU and PMA of February 10, 1972), the ILWU-PMA Nonmember Participation Agreement, was the result of arms-length collective bargaining.

ILWU initially proposed November 16, 1970, that PMA accept all nonmembers into the fringe benefit programs. PMA initially proposed that nonmembers be entirely excluded under any provisions of the agreement or any supplemental agreements. The give and take of collective bargaining finally resulted in the compromise between these opposite positions which is embodied in Supplement No. 4.

The ILWU-PMA joint workforce, the hiring hall machinery, the central payroll system, and the various fringe benefits have been developed jointly by PMA and ILWU after considerable effort over a long period of years.

The participation of nonmembers in such programs is an advantage to ILWU in its negotiations with the non-PMA member employers. While there are some disadvantages in nonmember participants being required by Supplement No. 4 to follow PMA labor policy, there is an overall benefit to ILWU in its dealings with employers to have solidarity among employers on a coastwise basis.

Supplement No. 4 does not restrain or restrict ILWU in negotiating separate contracts with non-PMA member employers. ILWU and PMA have no understanding or agreement as to the terms of ILWU's contracts with nonmember employers or that ILWU must contract with such nonmembers on terms which are equal to or less favorable to such nonmembers than to PMA members. In the past when contracts were bargained with nonmembers which would give them the fringe benefits and use of the joint workforce it was also necessary to have PMA consent to that arrangement.

The ILWU, neither in negotiating its current contracts with the petitioning ports nor in negotiating any future contracts with the ports, considers itself restrained in any way by Supplement No. 4 to the Memorandum of Understanding from negotiating with the ports on any basis that the ports and the ILWU can agree upon under the collective bargaining process.

Neither ILWU nor PMA was motivated in agreeing to Supplement No. 4 by a desire or intent to put the petitioning ports or any employer out of business or to injure them. Nor does the agreement operate in that way. There are men who perform longshore and clerk functions who are not part of the registered ILWU-PMA joint workforce who are available to nonmembers who do not sign the Participation Agreement.

Upon full consideration the ILWU reached the conclusion in the negotiations that having nonmembers participate in some parts of the ILWU-PMA program and not all is a great administrative inconvenience. We also concluded that PMA's position, that if nonmembers have the benefits jointly sponsored by PMA and ILWU they should have obligations which PMA members have, is basically fair.

The items covered by Supplement No. 4 to Memorandum of Understanding are matters which have been traditionally the subject of collective bargaining in the West Coast longshoring industry.

/s/ Fred Huntsinger
FRED HUNTSINGER

Subscribed and sworn to before me this 14th day of December, 1972.

/s/ Martin Friedman
Notary Public

BEFORE THE FEDERAL MARITIME COMMISSION

[Received Dec. 18, 1972]

[Caption Omitted]

MEMORANDUM OF LAW OF HEARING COUNSEL

I. INTRODUCTION

A. *The Petition of Certain Pacific Northwest Ports*

The Commission initiated this proceeding by Order of Investigation served September 6, 1972 in response to a petition filed by eight ports in the Pacific Northwest.[1] Petitioners allege the existence of agreements between the Pacific Maritime Association (PMA) a corporation organized and existing under the laws of the State of California consisting of steamship lines, steamship agents, stevedoring companies and marine terminal companies and the International Longshoremen's and Warehousemen's Union (ILWU), an unincorporated association which is the bargaining agent for longshoremen, marine checkers and dock workers who are employed at Pacific Coast ports of the United States. Petitioners contend that the PMA and ILWU have entered into an agreement known as Supplemental Memorandum of Understanding No. 4 (SMU No. 4) dated April 25, 1972, which allegedly supplements a PMA-ILWU master collective bargaining agreement establishing hiring halls which must be utilized by Petitioners to obtain longshore labor.

Petitioners allege that SMU No. 4 is intended to apply only to nonmemebers of the PMA and provides among other things that:

1) a nonmember of the PMA must become a party to the PMA-ILWU labor agreements if it wishes to employ any member of the joint PMA-ILWU work force;
2) a nonmember must conform his separate ILWU contract to the requirements of SMU No. 4;

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[1] The eight ports are Anacortes, Bellingham, Everett, Grays Harbor, Olympia, Port Angeles, and Tacoma (of the State of Washington) and Portland (of the State of Oregon).

3) any nonmember who fails to conform to the manpower allocation and referral system established by the PMA and ILWU is disqualified from employing any member of the joint work force;

4) nonmemebers are subject to assessments, dues, and other obligations imposed on PMA members and must furthermore submit to the labor policies of the PMA as respects strikes and lockouts.

Petitioners allege that SMU No. 4 and the underlying master collective bargaining agreement are "agreements" within the meaning of section 15 of the Shipping Act, 1916 which should be filed for approval pursuant to that section but have not been filed. Furthermore, it is alleged that the PMA and ILWU have demanded that Petitioners execute the "ILWU-PMA Nonmember Participation Agreement" established by SMU No. 4.

Petitioners allege that SMU No. 4 and the practices contemplated thereby are detrimental to the commerce of the United States, contrary to the public interest, unfair, unjust, discriminatory and unduly prejudicial in violation of sections 15, 16, and 17 of the Shipping Act, 1916 in certain enumerated respects. Specifically, it is alleged that they:

(1) Would permit the PMA and the ILWU to monopolize, dominate and control the business of moving cargo in foreign and interstate commerce from and to the Petitioners' ports, including the handling and storage of such cargo while at such ports.

(2) Would force shippers and consignees to deal with nonmembers of the PMA, including the Petitioners' ports, on terms substantially less advantageous than with members of the PMA, thereby enforcing a concerted boycott by shippers and consignees of such nonmembers. The effect of such boycott would be to make it difficult or impossible for nonmembers, including Petitioners' ports, to remain in business.

(3) Would force Petitioners and others similarly situated to join the PMA in order that the latter could control their activities, including dictating the labor policies of the Petitioners.

(4) Would regulate, dominate and restrain interstate and foreign commerce with respect to moving and storing cargo to be operated and carried out under artificial and noncompetitive conditions.

(5) Would achieve for the PMA an exclusive, preferential and cooperative working arrangement.

(6) Would permit the PMA and ILWU to control and regulate the marine terminal operators of Petitioners and prevent and destroy competition of the Petitioners with member companies of the PMA.

Petitioners pray that the Commission enter into an investigation of SMU No. 4 and the practices contemplated thereunder and after hearing find them to be in violation of the Shipping Act, 1916, declare them to be unlawful and void, and order the PMA to cease and desist from the aforesaid violations.

In reply to the petition, the PMA generally denies all but a few unessential allegations contained therein. Furthermore, the PMA asserts that it does not fix or regulate transportation rates, publish tariffs, etc. but exists solely to represent its members in collective bargaining negotiations, administer and implement collective bargaining agreements between its members and the ILWU and other maritime unions, and to establish labor policies consistent with such labor activities. Wherefore, it is asserted that the PMA is not an "other person" within the meaning of section 1 of the Shipping Act, 1916. Furthermore, it is asserted by the PMA that the ILWU, one of the two contracting parties to the agreements in issue, is not an "other person" within the meaning of the Act nor is otherwise covered by the Act, and that consequently neither the master PWA-ILWU agreement nor the SMU No. 4 is subject to submission, review, and/or approval by the Commission pursuant to the Act. Similarly, the ILWU has moved the Commission to dismiss the petition on the grounds that the ILWU is not subject to the jurisdiction of the Federal Maritime Commission nor is the SMU No. 4 which is a collective bargaining contract.

On October 19, 1972, in response to a petition filed by Hearing Counsel the Commission issued its First Supple-

mental Order Severing Jurisdictional Issues. In this Order the Commission severed the issue of the Commission's jurisdiction under section 15 over the subject agreements for expeditious determination by the Commission and further set down for determination whether any labor policy considerations would operate to exempt the practices resulting from these agreements from the provisions of sections 16 and 17 of the Shipping Act, 1916, and whether these agreements, if found subject to section 15, should be approved, disapproved, or modified pursuant to that section.

B. *Pending Antitrust Cases in the Courts*

There are pending three proceedings in the courts involving essentially the same parties and subject matter as are before the Commission. In *Port of Anacortes et al.* v. *PMA and ILWU*, Civil No. 72-618, U.S. District Court for the District of Oregon, the eight Pacific Northwest ports allege that defendants PMA and ILWU have combined and conspired to restrain trade in violation of antitrust laws by performing acts and adopting programs designed to monopolize and control the movement of cargo in foreign and interstate commerce from and to Pacific Northwest Coast ports, including the handling of such cargo while at such ports; compel shippers and consignees to deal solely with members of the PMA to the exclusion of plaintiffs by certain means; eliminate plaintiffs as non-PMA member competitors or in the alternative to force plaintiffs to join the PMA; fix prices and terms for services rendered by plaintiffs and enable PMA to collect additional funds as dues or in lieu thereof; and regulate and restrain interstate and foreign commerce in moving and storing cargo, and otherwise cause the businesses of moving and storing cargo to be operated so as to eliminate competition in said business.

Plaintiffs further allege that over the past several years defendants have engaged in an attempt to compel plaintiffs to become PMA members and that the PMA has threatened to exclude non-PMA members including the plaintiffs ports from the use they now enjoy of PMA-

ILWU hiring halls. The unlawful activity of defendants PMA and ILWU, it is alleged, is directly motivated by their desires to compel plaintiffs ports to become PMA members, or, in the alternative, to prevent or substantially impair the ability of plaintiffs ports to compete directly with PMA members in cargo handling in Pacific Northwest Coast ports.

The plaintiff ports specifically refer to the SMU No. 4 and describe its effects in the same manner as in their petition to the Commission. Plaintiffs moreover allege that defendants have announced their intention to enforce the provisions of SMU No. 4 against plaintiffs and to deny access to the joint work force as to any of the plaintiffs who fail to adhere to the conditions and requirements of said memorandum and that unless defendants are immediately restrained, plaintiffs will suffer immediate and irreparable damage to their business and property.

Plaintiffs also allege in a separate different count that the SMU No. 4 and underlying agreement establishing hiring halls are subject to section 15 of the Shipping Act, 1916 and are therefore unlawful until approved by the Federal Maritime Commission and ask the court to enjoin defendants from implementing the provisions of the SMU No. 4 until the Commission has had adequate time to carry out its powers.[2]

The plaintiffs also pray the court for a declaratory judgment and decree against defendants restraining defendants from implementing the SMU No. 4 or from denying plaintiffs access to the joint work force and further ask the court to declare that the SMU No. 4 is subject to section 15 of the Shipping Act, 1916, and for other relief *pendente lite*.[3]

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[2] In a final count in their complaint before the court, plaintiffs allege that they are precluded from entering into SMU No. 4 by applicable laws of the States of Oregon and Washington which forbid the ports from delegating control over labor policies.

[3] The Commission moved for leave to intervene in the *Anacortes* case and furthermore asked the Court to stay proceedings pending Commission determination of the status of the alleged agreements under the Shipping Act, 1916. By order dated October 3, 1972 inter-

In the second case before the courts, *The Port of Longview* v. *PMA and ILWU*, Civil No. 72-626, U.S. District Court for the District of Oregon, the plaintiff port alleges that defendants have entered into a number of agreements including that of April 25, 1972 (SMU No. 4) and have conspired to restrain interstate and foreign commerce by monopolizing and controlling the business of moving cargo in foreign and domestic commerce from and to West Coast ports, eliminating plaintiff port as a non-PMA member competitor, forcing plaintiff and others to join the PMA, diverting cargo to PMA members, imposing the terms and conditions of the PMA-ILWU agreement upon no parties thereto, and fixing prices for services rendered by plaintiff.

Plaintiff alleges the existence of an additional agreement between the PMA and Local 92 of the ILWU affecting the hiring of walking bosses and furthermore asserts that as a municipal corporation it is forbidden by the law of the State of Washington from delegating its authority with respect to labor policies. Plaintiff asks the court to enjoin defendants from implementing and enforcing the various agreements and from engaging in the allegedly unlawful conspiracy, combination and conduct in violation of the antitrust laws and for other relief.[4]

In the third case, *Port of Seattle* v. *PMA et al.*, Civil No. 214-72C2, U.S. District Court for the Western District of Washington at Seattle, plaintiff Port of Seattle alleges that defendants PMA and ILWU have combined and conspired to monopolize, dominate, and control commerce to and from West Coast ports, and have utilized their monopoly power and domination of the market to force plaintiff and others into joining the PMA and to remove the Port of Seattle and others from competition. Plaintiff

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vention was granted and the proceedings were stayed without prejudice.

[4] The Commission was granted intervention in the *Longview* case on November 28, 1972. We are advised that the Court has also stayed that proceeding.

alleges that from and after December 23, 1970, defendant PMA has engaged in an attempt to compel the Port of Seattle to become a PMA member and has threatened to exclude non-PMA members including the Port of Seattle from the use they now enjoy of PMA-ILWU hiring halls and participation in PMA-ILWU benefit plans, with the objective of compelling the Port of Seattle to become a PMA member or, in the alternative, to remove the Port from competition with PMA members. Moreover, it is alleged that defendants entered into an agreement on February 10, 1972 known as Section 1.55 of Memorandum of Understanding which would require that containers originating at or destined for delivery to a non-PMA member facility employing ILWU labor be stuffed or unstuffed by ILWU labor employed by an employer who is signatory to the PMA-ILWU collective bargaining agreements. Thus, it is alleged, containers destined to Port warehouses must undergo a completely useless and wasteful process whereas containers destined for warehouses orerated by PMA members would be delivered directly to the PMA-member warehouse without any requirement for unstuffing at a container freight station (CFS). Plaintiff alleges that the stated purpose of defendants in adopting this particular provision was to put the Port of Seattle out of business and that defendants have refused to release containers from container yards unless and until such containers are first delivered to CFS transit sheds for unstuffing by employees of PMA members.

Plaintiff alleges violations of sections 1 and 2 of the Sherman Act and section 3 of the Clayton Act and seeks an injunction permanently restraining defendants from implementing and enforcing their allegedly unlawful agreements plus treble damages and costs.[5]

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[5] A temporary restraining order was entered against defendants in this case on May 2, 1972. This was continued on May 22, 1972. On or about August 7, 1972, the Port of Seattle moved for a preliminary injunction against implementation of the PMA-ILWU Nonmember Participation Agreement. After the PMA and ILWU withdrew implementation and agreed to give 30-days notice to the Port before implementation, the motion was continued indefinitely. We are advised that the case has also been stayed on the merits.

C. *Pending Proceeding Before the National Labor Relations Board*

Still additional proceedings involving PMA and ILWU agreements are before the National Labor Relations Board. In *International Longshoremen's and Warehousemen's Union, Local 13, et al. and Pacific Maritime Association and California Cartage Company, Inc. et al.*, Case Nos. 21-CC-1326, 21-CE-103, 109, 111, 112 and 116, Administrative Judge James T. Rasbury issued a Decision on October 19, 1972 in which he found that certain agreements relating to Container Freight Stations (which include section 1.55 referred to in the *Seattle* case above) were in violation of section 8(e) of the National Labor Relations Act and that respondent Unions had furthermore violated section 8(b)(4)(i) and (ii)(B) of that Act. The basis for these findings were the facts that by agreement with the ILWU respondent PMA had refused to do business with certain companies that were not employing ILWU labor for the stuffing and stripping of containers and that ILWU was inducing employees of the PMA to refuse to handle containers stuffed by those companies. Respondents were ordered to cease and desist from implementing the unlawful agreements and from carrying out the unlawful practices described. The PMA was furthermore ordered to publish a notice which among other things stated that the PMA would not give effect to any provision of the PMA-ILWU CFS Supplemental Agreement which restricted handling of containers by employees of companies that are not members of the PMA.[6]

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[6] This Decision will become the decision of the NLRB unless exceptions are filed as provided in sections 102.46 and 102.48 of the NLRB's Rules and Regulations. Earlier, on May 16, 1972, the NLRB had obtained a temporary injunction against the PMA and ILWU in the case of *Wilford W. Johansen, Regional Director* v. *ILWU Local 10 et al.*, Civil No. 72-892-JWC, U.S. District Court Central District of California.

II. LABOR-RELATED CASES BEFORE THE COMMISSION

This is the fourth case before the Commission involving the difficult question of determining the scope of the Commission's jurisdiction under the Shipping Act, 1916 with regard to labor-related agreements. The difficulty in this area stems from the fact that the issue is essentially one of line drawing and one which involves reconciliation of conflicting statutory policies.

In the first of these cases, *Volkswagenwerk* v. *Federal Maritime Commission, et al.*, 390 U.S. 261 (1968) the Supreme Court held that an agreement among persons subject to the Shipping Act to assess themselves for the purpose of contributing to a mechanization fund established under the collective bargaining agreement with the union must be filed with the Commission for approval under section 15 of the Shipping Act, 1916. The union was not a party to the assessment agreement in the *Volkswagen* case, the agreement being formulated and executed exclusively by the Pacific Maritime Association. It was therefore only indirectly related to the collective bargaining agreement between the PMA and ILWU. The Court emphasized that neither the agreement creating the PMA nor the collective bargaining agreement between the PMA and ILWU were in issue, stating:

> "those agreements, reflecting the national labor policy of free collective bargaining by representatives of the parties' own unfettered choice, fall in an area of concern to the National Labor Relations Board . . ." 390 U.S. at p. 278.

Unfortunately as Mr. Justice Harlan pointed out in *Volkswagen*, the Court's reliance on a nebulous "area of concern" standard was unfortunate since it provided little guidance to signatories to agreements as to the status of their agreements under labor, antitrust, or shipping law. 390 U.S. at p. 286. Mr. Justice Harlan recognized, however, that the problem of reconciliation of the various statutory policies was one in which Congress itself had provided very little guidance. 390 U.S. at p. 284.

In the second case, *United Stevedoring Corp.* v. *Boston Shipping Association (BSA)*, FMC Docket No. 70-3, Report on Remand from the United States Court of Appeals for the Fifth Circuit, August 25, 1972, the Commission had under consideration three labor-related agreements, viz., the incorporation papers and bylaws establishing the BSA, an agreement providing for hiring and allocation of labor among stevedores, and an agreement among stevedores establishing certain "first call-recall" assignment rights as to labor gangs. The Commission found that all three agreements were entitled to so-called labor exemption and therefore held that they need not be filed for approval under section 15 of the Act. Moreover, the Commission enunciated certain criteria to be used in determining whether a particular agreement fell within the scope of the labor exemption. We discuss the Commission's decision in some detail in the next section.

The third case is *New York Shipping Association—NYSA-ILA Man-Hour/Tonnage Method of Assessment; Possible Violation of Sections 15, 16, and 17, Shipping Act, 1916*, F.M.C. Docket No. 72-51, Order to Show Cause served September 14, 1972. That case involves an agreement entered into between the NYSA and the ILA levying an assessment on carriers and stevedores for the purpose of funding certain fringe benefits established elsewhere in the collective bargaining agreement. Although the assessment agreement in that case is the successor to a previous agreement approved with modifications by the Commission in *Agreement No. T-2336—New York Shipping Association Cooperative Working Arrangement*, F.M.C. Docket No. 69-57, June 14, 1972, 13 Pike & Fisher S.R.R. 73, it is contended that the agreement is entitled to the labor exemption on the grounds that the agreement is the result of collective bargaining with the ILA.

III. THE CRITERIA ESTABLISHED BY THE COMMISSION IN UNITED STEVEDORING CORP. v. BOSTON SHIPPING ASSOCIATION

The scope of the so-called labor exemption from antitrust and regulatory law has been determined by the Commission recently in *United Stevedoring Corp.* v. *Boston Shipping Association (BSA)*, cited above. In that case which involved three labor-related agreements the Commission applied doctrines of law which had evolved through the courts in a number of cases arising under the antitrust laws. These agreements comprised first, the basic organic agreements establishing a multiemployer bargaining unit, second, an agreement as to allocation of labor gangs among stevedores, and third, an agreement as to the right of stevedores to exercise assignment and reassignment rights over labor gangs.

The Commission found that all three agreements fell within the scope of the labor exemption, the first agreement being primarily a collective bargaining unit, the second, nothing more than hiring by employers of employees, and the third, consisting of matter which had been the subject of good-faith bargaining having only limited competitive effects and without impact on entities outside the collective bargaining group. Multilith Report, pp. 10, 11.

In arriving at its decision in the *BSA* case, the Commission determined several issues which have been raised by respondents in this proceeding. Thus, the Commission held that the BSA as an entity is subject to FMC jurisdiction although its members and not the association itself actually perform transportation services on the principal that the association acts as agent of its members as does a conference, citing *Far East Conference* v. *F.M.C.*, 337 F.2d 146 (1964). Multilith Report, p. 4. This principle holds even if, as the Commission stated, "some members of the BSA may not be subject to our jurisdiction." Multilith Report, p. 4. Similarly, FMC jurisdiction would attach to the PMA as an entity. Otherwise, as the Commission observed, persons who are clearly subject to FMC jurisdiction could band together in the

form of an association and engage in matters of Shipping Act concern with regulatory impunity. Multilith Report, p. 4. Such a result, as the Commission stated, "would frustrate the entire purpose of the Act" and the Commission "will not tolerate such a device to blunt our regulation of this nation's maritime industry." Multilith Report, p. 4. We do not contend that the members of the PMA have established that association in order to evade regulation, only that the association as an entity apart from its members is subject to the Shipping Act.

The Commission discussed at some length the problem concerning accommodation of the Shipping Act with labor act policies in the *BSA* case. The Commission recognized the judicially-sanctioned doctrine whereby the fruits of collective bargaining are generally exempted from application of antitrust laws. On the other hand the Commission specifically acknowledged its responsibilities according to the *Volkswagen* case in which the Supreme Court first determined that labor-related assessment agreements are subject to section 15 of the Act. As the Commission stated:

> ". . . [W]e must adhere to the guidelines set forth in *Volkswagenwerk Aktiengesellschaft* v. *F.M.C.*, 390 U.S. 261 (1968) in which we were reproached for taking 'an extremely narrow view of a statute that uses expansive language'." [7]

The Commission cited the three leading cases in this particular area of law, namely, *Allen Bradley Co.* v. *Local 3, International Brotherhood of Electrical Workers*, 325 U.S. 797 (1945), *United Mine Workers* v. *Pennington*, 381 U.S. 657 (1965), and *Amalgamated Meat Cutters* v. *Jewel Tea Co.*, 381 U.S. 676 (1965). In the first two cases the Supreme Court held that the agreements between management and the Union were not exempt from the antitrust laws since the Court had found concerted effort by management and the Union to eliminate

[7] The Commission did recognize that the agreement in the *Volkswagen* case was not embodied in the collective bargaining agreement but was in implementation of a provision therein. Multilith Report, p. 5, n. 6.

competition in the industries involved. In the latter case, the Court found no conspiracy between employers and the Union to eliminate competition but rather a legitimate effort on the part of the Union to obtain favorable terms from a particular employer. Multilith Report, pp. 6, 7.

Following discussion of these cases the Commission enunciated several principles. First, that the question of exemption of labor-related matters from application of the antitrust laws is analogous to that involving exemption from the shipping laws. Multilith Report, p. 6. Hence the doctrines which have evolved in the antitrust cases can be applied in the instant case.

Second, as the Commission stated:

> "[t]he mere fact that a collective bargaining agreement involves a mandatory subject of bargaining does not ipso facto exempt the agreement from the antitrust laws." Multilith Report, p. 7.

As the Supreme Court stated in the *Pennington* case, cited above:

> "This is not to say that an agreement resulting from union-employer negotiations is automatically exempt from Sherman Act scrutiny simply because the negotiations involve a compulsory subject of bargaining . . . . But there are limits to what a union or an employer may offer or extract in the name of wages, and because they must bargain does not mean that the agreement reached may disregard other law." 381 U.S. at pp. 664, 65.

Third, since even the matters which are mandatory subjects of collective bargaining under the labor laws are not necessarily exempt from antitrust or regulatory laws, the mere presence of matters in collective bargaining agreements confers no immunity from antitrust or regulatory law. As the Commission stated:

> "The mere fact, therefore, that a certain agreement is part of a collective bargaining agreement does not

automatically immunize that agreement from the antitrust laws." Multilith Report, p. 11.[8]

Elsewhere the Commission stated:

> "We cannot, however, subscribe to the view that collective bargaining agreements be granted a blanket exemption from the Shipping Act." Multilith Report, p. 9.

Fourth, in determining whether labor-related agreements are subject to the provisions of the Shipping Act, 1916, the Commission will proceed on an ad hoc case-by-case basis. In making such determinations, furthermore, the Commission will consider the criteria evolved in the courts as guidelines or "rules or thumb" for each factual situation. Thus, the Commission will consider such factors as whether the agreement was the result of good-faith collective bargaining, the subject matter was a mandatory subject of bargaining, whether the Union was acting alone rather than at the behest of or in combination with nonlabor groups, and whether the result of the bargaining imposes terms on entities outside of the collective bargaining group. Furthermore, the Commission will examine whether the agreement is the type of activity which attempts to affect competition under the antitrust laws or the Shipping Act and whether the impact of the agreement upon business is significant or indirect and remote. Finally, the relief requested or the sanction imposed by law must then be weighed against its effect upon the collective bargaining agreement. Multilith Report, p. 8.

Moreover, the Commission held that it would give consideration to labor policy on an ad hoc basis with respect to possible violations of sections 16 and 17 of the Shipping Act.

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[8] Even Mr. Justice Douglas who dissented in *Volkswagen* from the majority opinion that the FMC had jurisdiction over the assessment agreement in question stated:

> "To be sure, the parties to a collective bargaining pact must frame their agreement to fit within the standards of the antitrust laws or any other governing statutes." 390 U.S. at p. 312.

IV. PMA-ILWU AGREEMENTS WHICH APPLY TO NON-PMA MEMBERS ARE NOT ENTITLED TO A LABOR EXEMPTION BECAUSE OF THE NATIONAL POLICY ENCOURAGING COLLECTIVE BARGAINING. HOWEVER SUCH ARGEEMENTS APPEAR TO RAISE SUBSTANTIAL ANTITRUST AND LABOR RATHER THAN SHIPPING ACT PROBLEMS.

It seems clear, we submit, on the basis of the Commission's decision in the *BSA* case and the cases cited therein that the agreement or agreements between PMA and the ILWU embodied in the SMU No. 4, section 1.55 of the Memorandum of Understanding regarding container stuffing and stripping, and related agreements alleged in the various complaints filed in the courts, are not entitled to the so-called labor exemption from antitrust or regulatory law. Assuming as we must for purposes of determining jurisdiction that all the allegations by the Pacific Northwest ports are true in fact, it appears that the PMA and ILWU are simply attempting to coerce the outside ports into becoming members of the PMA by forcing onto these ports the same terms and conditions of employment which were collectively bargained between the PMA and ILWU. Indeed, on its face, the SMU No. 4 establishes an "ILWU-PMA Nonmember Participation Agreement" and states among other things that:

> "A business entity not a member of PMA must participate in this ILWU-PMA Nonmember Participation Agreement if it uses men in the joint work force. The nonmember participant's separate ILWU contract must conform with the provisions hereof, and the provisions of the PCLCA . . . [the underlying collective bargaining agreement between PMA and ILWU] . . . governing the selection of men for inclusion in the joint work force." (See Appendix, SMU No. 4, paragraphs 1 and 2).

There are allegations, as we have seen, that the PMA has for some time been attempting to bring non-member

PMA ports into the association and that together with the ILWU and PMA has conspired to accomplish this objective and eliminate outside competition. It may be that if this alleged conspiracy were to succeed the Pacific Northwest ports who were previously free to contract with the ILWU on an individual port-by-port basis free and clear of PMA policies would suffer particular competitive harm. However, the particular activity which has given rise to the various complaints and petition, we submit, stripped to its essence is a conspiracy or combination between a group of employers and a union to force PMA membership on outsiders or impose terms and conditions of their collective bargaining agreement upon parties outside the collective bargaining unit with the objective of monopolizing and controlling the entire industry on the West Coast.

This type of activity involving a conspiracy or combination between a group of employers and a union is one which courts have traditionally dealt with in antitrust cases. In such cases the Supreme Court has held time and again that the parties to the conspiracy are not protected by the national policy encouraging collective bargaining if they combine to restrain trade. Typically, the Supreme Court has held:

> "But when the unions particiapted with a combination of business men who had complete power to eliminate all competition among themselves and to prevent all competition from others, a situation was created not included within the exemptions of the Clayton and Norris-LaGuardia Acts." *Allen Bradley Co.* v. *Local 3, International Brotherhood of Electrical Workers*, cited above, at p. 809.

Furthermore, the Supreme Court has made clear that unions lose their protection from the reach of antitrust laws if they enter into a combination with nonlabor i.e., employer groups. In this regard the Court has stated that the unions must act:

> "in pursuit of their own labor union policies and not at the behest of or in combination with nonlabor groups, . . ." *Amalgamated Meat Cutters* v. *Jewel Tea Co.*, cited above at pp. 689, 690. See also *Intercontinental Container Transport Corp.* v. *New York Shipping Association*, 426 F.2d 884, 886, 87 (2d Cir. 1970).

There is no protection from the antitrust laws merely because a particular combination or conspiracy to restrain trade was the subject of collective bargaining and actually became incorporated into a collective bargaining agreement. *United Stevedoring Corp.* v. *Boston Shipping Association*, cited above, at p. 11; *United Mine Workers* v. *Pennington*, cited above, at pp. 664, 65.

The alleged agreements which are the subject of this proceeding bear a striking resemblance to that found unlawful under the antitrust laws by the Supreme Court in the case of *United Mine Workers* v. *Pennington*, cited above. In that case a group of large employers in the mining industry had agreed with the union to impose certain labor standards on smaller employers outside of the immediate bargaining group. It was contended that this scheme was intended to eliminate from competition the smaller mine operators who allegedly could not withstand the costs of the particular terms and conditions of employment which would be forced upon them. The Court held:

> "But we think a union forfeits its exemption from the antitrust laws when it is clearly shown that it has agreed with one set of employers to impose a certain wage scale on other bargaining units. One group of employers may not conspire to eliminate competitors from the industry and the union is liable with the employers if it becomes a party to the conspiracy. This is true even though the union's part in the scheme is an undertaking to secure the same wages, hours, or other conditions of employment from the remaining employers in the industry." 381 U.S. at pp. 665-66.

The Court held that parties to a collective bargaining unit could not by agreement attempt to impose labor

standards outside of that unit or settle these matters for an entire industry. Thus, the Court stated:

> ". . . [T]he policy of the antitrust laws is clearly set against employer-union agreements seeking to prescribe labor standards outside the bargaining unit." 381 U.S. at p. 668.
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> • • • •
>
> "But there is nothing in the labor policy indicating that the union and employers in one bargaining unit are free to bargain about the wages, hours and working conditions of other bargaining units or to attempt to settle these matters for the entire industry." 381 U.S. at p. 666.
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> • • • •
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> "Thus the relevant labor and antitrust policies compel us to conclude that the alleged agreement between UMW and the large operators to secure uniform labor standards throughout the industry, if proved, was not exempt from the antitrust laws." 381 U.S. at p. 669.

In addition to the harmful effects of this type of agreement on employers throughout an industry, the Court found such agreements unlawful because of their detrimental effect on labor policy regarding a union's freedom to bargain. The Court stated in this regard:

> "The union's obligation to its members would seem best served if the union retained the ability to respond to each bargaining situation as the individual circumstances might warrant, without being straitjacketed by some prior agreement with the favored employers." 381 U.S. at p. 666.
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> • • • •
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> "From the viewpoint of antitrust policy, moreover, all such agreements between a group of employers and a union that the union will seek specified labor standards outside the bargaining unit suffer from a more basic defect . . . For the salient characteristic of such agreements is that the union surrenders its

> freedom of action with respect to its bargaining policy. . . . After the agreement the union's interest would be bound in each case to that of the favored employer group. It is just such restraints upon the freedom of economic units to act according to their own choice and discretion that run counter to antitrust policy." 381 U.S. at p. 668.

On the basis of the *Pennington* and other cases cited, we submit, the SMU No. 4 and related agreements between the PMA and ILWU are not exempted from the antitrust laws because of the national policy encouraging collective bargaining. Furthermore, we submit, the agreements essentially concern an attempt by one employer group, the PMA, in combination with a union, the ILWU, to impose terms and conditions of employment on outside employer groups, i.e. to impose uniform standards on an entire industry. This type of agreement, as we have seen, has traditionally been dealt with by the courts in antitrust cases in which antitrust and labor policies are involved.

We recognize that the alleged agreements if implemented might well have anticompetitive effects on the business of the ports in the Pacific Northwest as alleged and that consequently the agreements are not without Shipping Act implications. Since one of the parties to the agreement, the PMA, is a maritime association it is natural to expect that the effects of the agreement will ultimately be felt in the shipping industry. However, we submit, in their essentials the agreements involve antitrust and related labor policies and require determining whether parties engaged in collective bargaining have exceeded the scope of legitimate bargaining. In the *BSA* case the Commission held that labor-related cases would be decided on an individual ad hoc basis in consideration of a number of factors and that the Commission would balance these factors in an effort to determine whether Shipping Act problems were so significant as to warrant the exercise of the Commission's jurisdiction in labor-related areas. In this case, we submit, there are so many factors which relate to antitrust and labor laws and

policies rather than the Shipping Act that the Commission ought to leave these matters to the courts and the NLRB who are equipped to cope with them.

Should these various collective bargaining agreements be found lawful by the courts despite the *Pennington* case, we submit, and the parties carry out specific practices which may unduly prejudice the ports or cargo in violation of section 16, or may constitute unreasonable practices under section 17 of the Shipping Act, Shipping Act concern may become substantial and the obligations of members of the PMA under the Shipping Act (and also the ILWU as "any other person" under section 16) may have to be determined by the Commission. Such a case might involve accommodation between Shipping Act and labor policies but the Commission has held that the mere execution of a collective bargaining agreement cannot override the clear requirements of the Shipping Act. See *South Atlantic and Caribbean Line, Inc.—Order to Show Cause*, 12 F.M.C. 237, 241 (1969); *Burlington Truck Lines, Inc. et al.* v. *United States*, 371 U.S. 156, 172 (1962); *Substituted Service—Charges and Practices of For-Hire Carriers and Freight Forwarders*, 332 I.C.C. 301, 383 (1964).

Regarding the final issue set down in the Commission's First Supplemental Order, i.e. approvability of the subject agreements assuming they are found subject to section 15, we submit, such questions require the development of a full and complete evidentiary record in which their specific effects can be thoroughly explored.

V. CONCLUSIONS

This proceeding was initiated by the Commission in response to a petition filed by eight Pacific Northwest ports who alleged the existence of agreements between respondents PMA and ILWU by which respondents were allegedly attempting to force the ports into becoming members of the PMA or accepting the terms and conditions of the PMA-ILWU collective bargaining agreements. It is alleged that these agreements would permit the PMA and ILWU to monopolize, dominate, and control the business

of moving cargo through petitioners' ports with harmful effects on the ports. It is further alleged that these agreements have not been filed for approval with the Commission as required by section 15 of the Shipping Act, 1916.

The alleged agreements are also the subject of three antitrust cases now before U.S. District Courts in Oregon and Washington. Furthermore, PMA-ILWU agreements relating to container stuffing and stripping are involved in a proceeding before the National Labor Relations Board in which an Administrative Judge has found such agreement to be in violation of the National Labor Relations Act.

The Commission has had for consideration four cases including this one which involve the difficult question of determining the scope of the Commission's jurisdiction with regard to labor related agreements. In the most recently decided case, *United Stevedoring Corp.* v. *Boston Shipping Association* (BSA) the Commission held that three labor-related agreements need not be filed for approval under section 15. In its decision the Commission enunciated certain criteria to be used in determining whether an agreement is protected by the so-called labor exemption and furthermore stated that it would decide each labor-related case on an individual ad hoc basis after weighing a number of factors which would indicate whether the agreement raised essentially labor rather than Shipping Act problems.

According to the governing principles of law as evolved in the courts parties to collective bargaining agreements do not enjoy an exemption from antitrust laws if they engage in conspiracies or combine to restrain trade in any particular industry. An attempt by one group of employers in combination with a union to force terms and conditions of employment on other employers in an industry outside of the immediate collective bargaining unit is specifically condemned under the antitrust laws as shown by *United Mine Workers* v. *Pennington*. Not only is this type of conspiracy condemned because of the harm resulting to other employers but because of the harm to unions which lose their freedom to bargain with other employers.

Although not without Shipping Act implications since they occur in the shipping industry, the subject agreements bear a striking resemblance to that type of agreement condemned under the antitrust laws in *Pennington*. In their essentials the subject agreements involve antitrust and related labor policies and require a determination whether parties engaged in collective bargaining have exceeded the scope of legitimate bargaining. For these reasons, we submit, these matters ought to be left to the courts and the NLRB who are equipped to cope with them.

If ultimately the agreements are found lawful by the courts despite *Pennington*, the actual practices flowing in implementation thereof may raise substantial Shipping Act problems under section 16 or 17 of the Act. If so, we submit, the Commission would have to determine the obligations of the parties under the Act with due consideration to labor policies, but as the Commission has held, the mere execution of a collective bargaining agreement cannot override the clear requirements of the Shipping Act.

The question of approvability of the agreements assuming they are found subject to section 15 cannot be answered absent a fully developed evidentiary record exploring their specific effects.

Respectfully submitted,

DONALD J. BRUNNER,
Director
Bureau of Hearing Counsel

NORMAN D. KLINE
Hearing Counsel

Washington, D.C.
December 15, 1972

BEFORE THE FEDERAL MARITIME COMMISSION

[Received Dec. 19, 1972]

[Caption Omitted]

MEMORANDUM OF LAW ON BEHALF OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, INTERVENOR

INTRODUCTION

International Longshoremen's Association, AFL-CIO (ILA), an intervenor in this proceeding, asks the Commission not to exercise jurisdiction over the collective bargaining agreement between International Longshoremen's and Warehousemen's Union (ILWU) and the Pacific Maritime Association (PMA) because such collectively bargained agreement does not fall within the scope of the Commission's jurisdiction.

ILA adopts the facts set forth by the Respondent, ILWU.

ILA, although not a party to the agreement between ILWU and PMA, is a party to a collective bargaining agreement with New York Shipping Association, Inc. (NYSA) and assertion of jurisdiction herein would have an effect on Docket No. 72-51. It is the position of the ILA that any interference by the Commission with the agreement between ILWU and PMA would be without the scope of its jurisdiction and an intrusion into collective bargaining. If the Commission should assert jurisdiction merely because one of the parties to the agreement acting alone might be subject to the Shipping Act and therefore subject to the Commission's jurisdiction, such assertion of jurisdiction would violate the right of employees to bargain collectively through representatives of their choice which right is guaranteed under the Labor-Management Relations Act, as amended.

The stevedoring industry has for the past several years been in the throes of a mechanization revolution which has substantially reduced work opportunities in almost every port in the country. It is because of the great changes in the methods of cargo handling and the need to protect the employees in the industry that the unions involved have taken steps to insure the income and fringe benefits of their members.

ILA asks the Commission to dismiss the petition because of lack of jurisdiction over the agreements involved.

STATEMENT OF THE CASE

The Petitioners herein are various municipal corporations in the States of Washington and Oregon which own and operate marine terminal facilities. They seek an investigation by this Commission of an Agreement between ILWU and PMA and a Supplemental Memorandum of Understanding #4 which Agreement and Supplemental Memorandum concern themselves with the method of man power allocation and a referral system. The Supplemental Memorandum #4 requires that non-members of PMA must conform to the man power allocation and referral system and further requires them to participate in the obligations of PMA to the employee members of ILWU.

Petitioners claim that Memorandum #4, if implemented, would constitute a violation of Sections 15, 16 and 17 of the Shipping Act of 1916. The Commission has set this matter down for a determination as to jurisdiction prior to any determination as to the question of violation of the Act.

ARGUMENT

The collective bargaining agreement including the Supplemental Memorandum of Understanding #4 involved herein is an agreement exempt from regulation by the Commission.

In the case of *United Stevedoring Corporation* v. *Boston Shipping Association* (F.M.C. Docket No. 70-3, Aug. 25, 1972), this Commission held that the collective bargaining agreement therein involved was exempt from its jurisdiction.

In that case, the Commission recognized the problems of the maritime industry and that its intrusion into collective bargaining might further aggravate these problems. The Commission also took cognizance of the fact that the courts have carved out a labor exemption from the anti-trust laws that such a labor exemption from the Shipping Act did indeed exist.

The lack of jurisdiction is supported by the Supreme Court decision in *Volkswagenwerk* v. *Federal Maritime Comm'n*, 390 U.S. 261 (1968). In *Volkswagen*, the Court reiterated its past holdings that the national labor policy over free collective bargaining is within the exclusive jurisdiction of the National Labor Relations Board (N.L.R.B.).

In his concurring opinion, Mr. Justice Harlan stressed the necessity for exemption for collectively bargained agreements from conflicting regulation both under the anti-trust laws and the Shipping Act. See also *United Mine Workers* v. *Pennington*, 381 U.S. 657 (1965); *Meat Cutters Local 189* v. *Jewel Tea Co.*, 381 U.S. 676 (1965); *Apex Hosiery Co.* v. *Leader*, 310 U.S. 469 (1940); *United States* v. *Hutcheson*, 312 U.S. 219 (1941); *Allen Bradley Co.* v. *Electrical Workers Local 3*, 325 U.S. 797 (1945); *American Federation of Musicians* v. *Carroll*, 391 U.S. 99 (1968); *Teamsters Local 24* v. *Oliver*, 358 U.S. 283 (1959).

ILA was a party in the case of *Intercontinental Container Transport Corp.* v. *New York Shipping Association*, 426 F.2d 884 (2d Cir. 1970) which involved an anti-trust law suit against both NYSA and ILA resulting from the collective bargaining agreement between them limiting the use and handling of containers. The Court of Appeals, Second Circuit, held at p. 888 that the container rules were "within the protection of the labor exemption to the anti-trust laws". See *Kennedy* v. *Long Island R. R. Co.*, 319 F.2d 366 (2d Cir. 1963), cert. denied, 375 U.S. 830 (1963); *Burlington Truck Lines* v. *United States*, 371 U.S. 156, 172-173 (1962).

The agreement involved herein is clearly within the protection of the labor exemption to the Shipping Act. Any other determination would frustrate collective bargaining agreements within the maritime industry and would cause further disruption to an industry which has been disrupted by long and costly strikes, contract after contract. Industrial peace in the maritime industry can only be maintained by agreement between the parties involved without any governmental interference. The regulation of collective bargaining agreements as defined by the courts lies exclusively within the jurisdiction of the National Labor Relations Board.

In any event, the ILA and ILWU, both of which are labor organizations, are not subject to the jurisdiction of the Commission.

They are neither "common carriers by water" nor are they "other persons subject to" the Act.

Although the Commission may have jurisdiction over the PMA in the instant case or the NYSA, in Docket No. 72-51, any order that it may issue to either of those parties could not be binding on ILWU or ILA.

Certainly, the best that can be accomplished by assertion of jurisdiction by the Commission would be to impair the collective bargaining agreements involved.

Action by the Commission would not only result in detriment to peaceful labor relations but also would be detrimental to our national economy which has already sustained severe blows by the protracted strikes which resulted in the agreements under attack.

The Commission must recognize that the goals of the ILWU and ILA are not to aid any employer group but *solely* to protect the job opportunities, wages and fringe benefits of the employees whom they represent.

CONCLUSION

THE COMMISSION SHOULD FIND THAT IT LACKS JURISDICTION IN THIS MATTER AND THE PETITION SHOULD BE DISMISSED.

Respectfully submitted,

GLEASON & MILLER

By: /s/ Thomas W. Gleason
THOMAS W. GLEASON
Attorneys for International Longshoremen's Association, AFL-CIO, Intervenor

THOMAS W. GLEASON
JULIUS MILLER
Of Counsel

Dated: December 14, 1972

BEFORE THE FEDERAL MARITIME COMMISSION

[Received Jan. 12, 1973]

Docket No 72-48

AFFIDAVIT OF B. H. GOODENOUGH

B. H. Goodenough being first duly sworn deposes and says:

I am the Vice-President, Shoreside Labor Relations, Pacific Maritime Association (PMA) where I have been employed for 15 years. As such I am thoroughly familiar with maritime shoreside labor employment on the Pacific Coast and participated actively in the negotiations leading to the February 10, 1972 agreement between PMA and ILWU and the subsequent Supplement No. 4 relating to nonmember participation. I previously submitted an affidavit dated December 14, 1972 in this docket.

The affidavit of the petitioning ports and particularly the one submitted on behalf of the Port of Seattle contain numerous references to the rough minutes of the negotiating sessions in 1971 and early 1972 between the ILWU and the PMA. Included in these references are comments concerning the "Seattle problem" and some references particularly by Mr. Bridges of the ILWU directed toward Seattle as well as references concerning the Container Freight Station (CFS) Supplemental Agreement, Article 1.55 of that agreement, and other references concerning Local 9 vs. Local 19 at the Port of Seattle. A principal purpose of this affidavit is to recite facts which will show that the so-called "Seattle problem", the CFS Supplement, and the dispute relating to Locals 9 and 19 of the ILWU, are themselves interrelated but are not related to the subject of this docket, namely Supplement No. 4, the Nonmember Participation Agreement, and have no bearing whatsoever on that agreement.

The Port of Seattle operates what they refer to as back-up warehouses. These warehouses are used almost exclusively in the storage of inbound (import) cargo under the OCP tariffs of the inbound conferences. The cargo under the OCP system is stored in transit for an average period of 90 to 120 days. (Seattle's "warehousing" operation is described in a letter addressed to me from J. Eldon Opheim of March 28, 1972 attached as Exhibit A.) The Port has an agreement with Local 9 of the ILWU to perform the warehouse work. Local 9 of the ILWU are warehouse employees. They are not longshoremen, marine clerks or walking boses. They are not included in the PMA/ILWU Pacific Coast Longshore Agreement. They are not hired through the PMA/ILWU hiring hall, they are not involved in the PMA/ILWU pension and welfare programs, and their contracts are not in any way negotiated by PMA but rather by a different group of employers. It should be explained that of the approximately 60,000 members of the ILWU only about 14,000 are longshoremen, marine clerks, and walking bosses with whom PMA contracts. So far as PMA is concerned Local 9 in Seattle, like Local 6 in San Francisco area, are no different from teamsters or other unions unrelated to the ILWU.

Local 19 at the Port of Seattle are the longshoremen doing longshore work. Locals 52 and 98 are marine clerks and walking bosses. These Locals are included in the workforce of the PMA/ILWU agreements.

So long as the Port of Seattle in operating their so-called back-up warehouses and employing Local 9 labor in those warehouses use such labor for warehouse work there has been and presumably would be no strife between Local 9 and the longshore locals. However, in a small part of their warehouse operation, I am informed less than 5%, are engaged in work which other locals consider CFS work in stuffing and unstuffing containers. It is this work which has caused the problem. Sometime ago Seattle asserted that it would make other arrangements for this activity (see Exhibit A).

The problem is one of internal strife between the various locals of the ILWU. The longshore locals feel

strongly that CFS work should be done solely by them. This has created some work disruption and is the matter which Mr. Bridges, myself, Mr. Flynn and others at the negotiating table referred to as the "Seattle problem". It is a problem which PMA cannot solve and it is a problem which Mr. Bridges stated in the negotiations was one which he would handle. In references in the documents filed by the petitioning and intervening ports in which Mr. Bridges made some comments about putting Seattle out of business, it was and is my understanding that he was referring to his forcing Local 9 to stick to warehousing activities so that the CFS operations at the warehouses performed by Local 9 under Seattle's employment would be stopped and that work would be performed by longshore workers.

The CFS Supplement to the February 10, 1972 Memorandum of Understanding between PMA and ILWU is an amendment to a prior CFS agreement between PMA and ILWU. It is not in any way limited to the Port of Seattle or any other Northwest Ports, but it does relate to a similar problem to that described above existing elsewhere as well as to the Seattle problem. In other areas, particularly in California, there developed a dispute between the longshoremen and other unions concerning the operation of container freight stations in the stuffing and unstuffing of containers. The problem, simply stated, is that the longshoremen who have an agreement with PMA members consider that stuffing and unstuffing of containers is longshore work. The place where the work is performed creates a complication. There appears to be no real inter-union dispute that if the work is actually performed on the dock it is longshore work. If the stuffing and unstuffing is performed inland, say 50 miles or more, there is little disagreement that it is not longshore work. A gray area exists between those two extremes. The CFS Supplement negotiated between PMA and ILWU is designed to require that the CFS work within a specified perimeter from the dock be performed by ILWU longshoremen employed by PMA members, and if it is not, that a container tax be assessed—or alternatively that the cargo be re-handled or stuffed and

unstuffed by longshore workers regardless of whether it is also performed by non-longshore workers.

The CFS Supplement has been the subject of litigation. This litigation demonstrates that the CFS Supplement is unrelated to the dispute as to the Nonmember Participation Agreement. Further, as a result of this litigation the CFS Supplemental Agreement has been enjoined pending determination in the first instance of the National Labor Relations Board, and hence could hardly be the subject of petitioners' complaint here.

The Port of Seattle on April 4, 1972 filed a complaint in the U.S. District Court, N.D. Washington, against PMA, the ILWU, Locals 19 and 52, and members of the PMA who do business in Seattle. That complaint, a copy of which is attached hereto as Exhibit B, alleges many of the very arguments, contentions, allegations and statements in the briefs and affidavits which have been filed in this proceeding by the Port of Seattle. This subject, involving CFS Supplement and the inter-union dispute between Locals 9 and 19, has nothing whatsoever to do with the Nonmember Participation Agreement, Supplement No. 4, which is the subject of this proceeding. This is clearly shown by the fact that Seattle's complaint making all of these allegations was filed April 4, 1972, whereas Supplement No. 4 was not even signed until April 25, 1972.

An injunction against PMA and ILWU implementing their CFS Supplement has been issued by U.S. District Court in Seattle and by the U.S. District Court for the Southern District of California in Los Angeles, pending consideration by the National Labor Relations Board. This litigation is referred to in Hearing Counsel's Brief in this docket. Whether Supplement No. 4 had been agreed to, whether Seattle signed the new Nonmember Agreement or not, or whether Seattle became a member of PMA, would not solve the so-called "Seattle problem" of Local 9 performing CFS work which Local 19 claims belongs to it.

I now turn to the other subjects covered in the affidavits.

The affidavit of Richard D. Ford filed in this proceeding on behalf of the Port of Seattle asserts that if through failure to sign the Nonmember Participation Agreement contained in Supplement No. 4 the Port is denied access to the PMA/ILWU workforce, certain specific terminals at the Port of Seattle would be required to shut down. I believe this to be a gross exaggeration. In my opinion failure to sign the Nonmember Participation Agreement would simply mean that the Port would have to employ those few longshoremen and walking bosses, as well as the substantial number of clerks, they now secure from the PMA/ILWU workforce from some other source. In addition, the Port would have to make its own arrangements with the new workforce for various fringe benefit coverages and also process their own payroll. That is the very essence of PMA's position in regard to the nonmember situation. If the Port of Seattle or any other nonmember entity wants to continue to utilize the PMA/ILWU workforces and participate in the various tangential situations arising out of the PMA/ILWU collective bargaining agreements, they should be entitled to them only if they (the Port) participate on an equal basis in all collective bargaining matters as do PMA members. If they choose not to participate, they are then a free agent to secure labor, perform their normal functions and negotiate their own separate collective bargaining agreements with whatever group might obtain jurisdiction. As stated in the prior affidavits filed on behalf of PMA and on behalf of ILWU in the proceeding, the Port of Seattle could find another workforce to take the place of the present men utilized from the ILWU/PMA workforces. The Port would not, in my opinion, be required to shut down any of its facilities.

The petitioning ports attempt to make a considerable point out of the references at the time of reaching the February 10th agreement that it covered the economic issues and that other so-called non-economic issues (which in this context included Supplement No. 4) would be continued to be negotiated, mediated or arbitrated. These terms were used in a narrow sense. What was

meant by economic issues was those issues to which could be affixed a specific cents/hour cost—in effect the issues which would go to the Wage and Price Boards for approval. The so-called "non-economic" issues which were referred to upon reaching the February 10th agreement included many matters which effected the economic well being of both the employers and the employees and most certainly included matters which involved working conditions of the employees. I include in that category matters involved in Supplement No. 4. For example, Supplement No. 4 is very directly concerned with the ability of the ILWU workers to have their hours credited towards ILWU/PMA pension and welfare when employed by a nonmember.

The affidavit of Mr. Ford (pp. 4-6) contains a number of allegations under the caption "Acts of PMA to Compel Seattle to Become a PMA Member". Similar allegations were made in the complaint filed April 4, 1972 by Seattle against PMA in the U.S. District Court referred to previously. Mr. Ford has misinterpreted concientious efforts by PMA to solicit membership for the common benefit of the Port of Seattle, the PMA and PMA/ILWU workforce, as threats and attempts to compel membership.

Undoubtedly, PMA has from time to time over the years solicited Seattle's membership. It is an advantage to any employer's collective bargaining association to have as many members as possible and to present as great a united front in negotiations with labor as possible. But I categorically deny that I, or to my knowledge, any PMA official has threatened to compel Seattle to join PMA. The very fact that Seattle has enjoyed the benefits of nonmember participation agreements with PMA and the ILWU and still does belies the contention.

As to the specific allegations: The letter of December 23, 1970 sent to Seattle and to other members did invite the recipients to join PMA. It also, as a courtesy, advised them of PMA's initial negotiating position presented to the ILWU on December 7, 1970 as quoted at page 6 of my prior affidavit in this docket. It contained no threats. If on January 29, 1971 representatives of

PMA did visit Seattle "for the express purpose of soliciting nonmember ports, including Seattle" which is all that is claimed as to that meeting, I was not aware of it. As to organizing a meeting on February 26, 1971 at Sacramento, I never had any part in such alleged activities and I have no recollection of authorizing any member of PMA's staff to organize such a meeting. I do note that the affidavit of Mr. Ford does not state such a meeting took place but only that it was organized. I do recall several telephone calls with Mr. Ford but I believe he has misunderstood the nature of my statements to him. In some conversations we were dealing with the CFS subjects, in others with the nonmember issue. I did urge the Port of Seattle to join PMA but I never threatened. Basically I was endeavoring in all of these conversations to make clear to the Port of Seattle the PMA negotiating posture on these two issues.

/s/ B. H. Goodenough
B. H. GOODENOUGH

Subscribed to and sworn to before me this — day of January, 1973.

/s/ Joan Fowler
Notary Public

"EXHIBIT A" TO GOODENOUGH AFFIDAVIT

PORT OF SEATTLE
P.O. Box 1209
Seattle, Washington 98111

March 28, 1972

Mr. Ben Goodenough, Vice President
Pacific Maritime Association
P.O. Box 7861
San Francisco, California 94120

Dear Ben:

This will confirm oral conversations between the two of us and other Port staff members concerning the operation of Port of Seattle "backup" warehouses and the impact of Section 1.55 of the Container Supplement on those operations.

As we have stated, the Port's warehouses are bona fide warehouse operations which place the cargo in the storage position for *average* time periods of 90 to 120 days. The Port has a valid and enforceable labor agreement with ILWU Local 9 to perform all warehouse work which has been in effect for many years and was recently renewed. The agreement had the full blessing of the ILWU, both regionally and coastwise. We think much of the confusion arises from some fuzzy thinking on distinctions between CFS work, consolidating, freight forwarding, warehousing et al.

To try to set the record straight we want to outline the facts of our operation in the hopes that this will clear the air. For practical purposes, *no* cargo is moved to a warehouse unless it is OCP freight and is going into a storage position. Emergencies may on occasions move cargo through the warehouse after only a short storage period, but this is costly for the user, thus, very rare. "Mixed" containers, i.e., those containing some cargo destined for warehouse and other cargo for direct move-

ment inland, are stripped at a CFS shed using ILWU Local 19 labor and the warehouse portion of the cargo is separately drayed to the warehouse. This is our practice and will continue to be our practice. The only containers shipped direct to warehouse are units containing cargo destined only for warehouse positioning. Such units are delivered by the steamship line on a "CY" basis.

The Port is also a shipper's agent. We are not "freight forwarders" or "consolidators" in the sense that those terms are usually used. As a shipper's agent we place on a single bill-of-lading (truck or rail and occasionally air) cargo of two or more shippers in order to achieve the most advantageous inland carriage rate. Pursuant to this bill of lading, we instruct the inland carrier of the locations of the cargo so that he can perform the pick up. Basically the Port performs no labor in this process, except where some portion of the cargo under the "consolidated" bill-of-lading is picked up at the backup warehouse. In that event, Port of Seattle warehouse labor "picks" the cargo from its storage position and delivers it to a loading dock where the inland carrier takes delivery and loads to his vehicle.

It is almost unheard of to load consolidated bill-of-lading shipments into rail boxcars at the warehouse. However, whatever minimal rail boxcar loading that is done at back up warehouses is performed by ILWU Local 9.

The more typical "consolidated" bill-of-lading shipments are as follows:

1. "Marriage of containers"—full containers of two or more shippers are ordered direct to flat car under a single bill-of-lading to obtain the lowest possible COFC rate. This is a "CY" delivery situation. The inland carrier's personnel takes delivery at the CY from the terminal operator.

2. Transload containers to "High Cube" Inland Carrier Equipment. Containers of two or more shippers are unloaded directly into piggyback equipment of rails. This involves ILWU Local 19 labor unloading the container and passing the cargo direct to the teamster "at tailgate" who loads the inland vehicle, at terminal and other CFS locations which have been previously identified for you.

3. "Split pick up by Inland Carrier." This involves the inland carrier vehicle going to two or more locations to pick up stripped or break bulk shipments of two or more shippers. The pick up can be made at transit sheds, CFS or warehouse. In this case, normal delivery practices apply and the inland carrier loads his own vehicle.

4. Single pick up for loading stripped or break bulk cargo of two or more shippers into inland carrier vehicle. This occurs when the cargo of two or more shippers combined on single bill-of-lading is located at the same terminal, CFS shed or warehouse. The procedures here are the same as 3 above only no split pick up is required.

These are the principal examples of the so-called Port "consolidation." We *do not* operate a freight forwarding business, nor do we physically consolidate at a single location as to the Ports of San Francisco or Oakland. In fact, the Port of Seattle performs no physical labor, either direct or indirect, in consolidation except to "pick" and make available (pursuant to our storage tariff) at the loading dock cargo in our warehouses. Also, at Port-operated terminals the Port provides the Local 52 delivery checker.

The Port's so-called "consolidation" is entirely a paperwork operation which places the cargo of two or more shippers on a single prepaid bill-of-lading and directs the inland carriers in their pick up of cargo pursuant to the inland bill-of-lading. The Port thereafter bills each shipper his proportionate share of the inland freight charges. Our operations have been under regular surveillance of federal regulatory agencies and to date have received a clean bill of health.

I hope this gives you the factual background you need. Incidentally, as I indicated before, the direct to ware-

house containers in 1971 involved about five per cent of the number of manhours at PMA member operated CFS sites, including but not limited to Terminal 102.

We see no indication that this proportion will change in the foreseeable future. Our position is unchanged, i.e., warehouse functions are not in the jurisdiction of the Coast Agreement or CFS document as we understand it, and that in any event the longstanding Port/Local 9 agreement cannot be abrogated by sole action of PMA and the ILWU.

Yours very truly,

/s/ Richard D. Ford for
J. ELDON OPHEIM
General Manager

RDF:pa

"EXHIBIT B" TO B. H. GOODENOUGH AFFIDAVIT

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Civil No. 214-7202

COMPLAINT

JURY DEMAND

PORT OF SEATTLE, a municipal corporation, PLAINTIFF,

vs.

PACIFIC MARITIME ASSOCIATION, a corporation; INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an unincorporated association; INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION LOCAL 19, an unincorporated association; INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION LOCAL 52, an unincorporated association; ALASKA STEAMSHIP COMPANY; AMERICAN MAIL LINE, LTD.; AMERICAN PRESIDENT LINES, LTD.; BALFOUR, GUTHRIE & CO., LTD.; BARBER STEAMSHIP LINES, INC.; BRADY-HAMIL-

TON STEVEDORE CO. OF WASHINGTON; CALMAR STEAMSHIP CORPORATION; CONTAINER FREIGHT SYSTEM, LTD.; CONTAINER STEVEDORING CO., INC.; CRESCENT WHARF & WAREHOUSE COMPANY; CROWN ZELLERBACH CORPORATION; CRUSADER SHIPPING CO., LTD.; FLOTA MERCANTE GRANCOLOMBIANA, S.A.; FREIGHTCARE, LTD.; FRENCH LINE; GREAT EASTERN SHIPPING CO., LTD.; HAPAG-LLOYD AG; HOLLAND-AMERICA LINE; INTERNATIONAL SHIPPING COMPANY; INTERNATIONAL SHIPPING CO., INC.; ITALIAN LINE; JAPAN LINE, LTD.; JOHNSON LINE; JONES STEVEDORING COMPANY; KAWASKI KISEN KAISHA, LTD.; KERR STEAMSHIP COMPANY, INC.; KNUTSEN LINE; MATSON NAVIGATION COMPANY; MITSUI O.S.K. LINES, LTD.; NIPPON YUSEN KAISHA; THE OCEANIC STEAMSHIP CO.; OLYMPIC STEAMSHIP CO., INC.; OVERSEAS SHIPPING COMPANY; PACIFIC AUSTRALIA DIRECT LINE; TRANS-AUSTRAL SHIPPING PTY. LTD.; PACIFIC FAR EAST LINE, INC.; PACIFIC ISLANDS TRANSPORT LINE; PHILIPPINE PRESIDENT LINES; P & O LINES (NORTH AMERICA) INC.; RELIABLE LINE SERVICE; ROTHSCHILD WASHINGTON STEVEDORING CO.; SEA-LAND SERVICE, INC.; SEATRAIN INTERNATIONAL, S.A.; SEATRAIN LINES, CALIFORNIA; SEATTLE BULK LOADING TERMINAL, INC.; SEATTLE STEVEDORE COMPANY; STATES MARINE LINES; STATES STEAMSHIP COMPANY; TAIWAN NAVIGATION CO., LTD.; TOKAI SHIPPING CO., LTD.; TRANSPACIFIC TRANSPORTATION CO.; UNITED PHILIPPINE LINES, INC.; UNITED STATES LINES, INC.; WESTFAL-LARSEN LINE; WILLIAMS, DIMOND & CO.; and YAMASHITA-SHINNIHON STEAMSHIP CO., LTD. DEFENDANTS.

Plaintiff brings this civil action under the antitrust laws for an injunction against the defendants and each of them, for treble damages and costs of suit, including a reasonable attorney fee, and alleges:

JURISDICTION

1. This Court has jurisdiction of the parties and the subject matter by reason of 15 U.S.C. §§ 15, 22 and 26.

2. Each defendant resides, is found in, or has an agent and transacts substantial business in this Judicial District. The acts in violation of the antitrust laws herein alleged have been and are being carried out, in part, within this Judicial District.

3. Plaintiff has been injured in its business and property by reason of defendants' past and continuing acts, hereinafter described, that are forbidden by the antitrust laws.

4. Plaintiff is threatened immediately with the danger of additional irreparable loss and damage to its business and property by reason of defendants' continuing acts, hereinafter described, in violation of the antitrust laws. Conditions and circumstances exist which would constrain a court of equity, under rules governing such proceedings, to grant immediate injunctive relief against the continuing illegal acts of the defendants.

DESCRIPTION OF THE PARTIES

5. The Port of Seattle is a municipal corporation organized and existing under the laws of the State of Washington. The Port exercises public functions as a port district under the provisions of RCW Title 53, and as a wharfinger and warehouseman under the provisions of RCW title 81, Chapter 94. Pursuant to statute, the Port owns and operates both marine terminal facilities and warehouses. It derives its revenue from wharfage and dockage charges to ocean carriers for use of its marine terminals, from the lease or rental of certain of its real or personal property to ocean carriers and others, and from charges made for warehousing services offered to shippers and consignees, as hereinafter defined.

6. Defendant Pacific Maritime Association is a corporation organized and existing under the laws of the State of California and composed of steamship lines, steamship agents, stevedoring companies and warehousing companies operating in Pacific Coast ports of the United States, and three of such ports. It was formed in 1949 by consolidation of the Waterfront Employers Association of the Pacific Coast, the Waterfront Employers Association of California, and the Pacific American Shipowners Association.

7. Defendants Alaska Steamship Company; American Mail Line, Ltd.; American President Lines, Ltd.; Balfour, Guthrie & Co., Ltd.; Barber Steamship Lines, Inc.; Brady-Hamilton Stevedoring Co. of Washington; Calmar Steamship Corporation; Container Freight System, Ltd.; Container Stevedoring Co., Inc.; Crescent Wharf & Wharehouse Company; Crown Zellerbach Corporation; Crusader Shipping Co., Ltd.; Flota Merchante Grancolombiana, S.A.; Freightcare, Ltd.; French Line; Great Eastern Shipping Co., Ltd.; Hapag-Lloyd AG; Holland-America Line; International Shipping Company; International Shipping Co., Inc.; Italian Line; Japan Line, Ltd.; Johnson Line; Jones Stevedoring Company; Kawasaki Kisen Kaisha, Ltd.; Kerr Steamship Company, Inc.; Knutsen Line; Matson Navigation Company; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; The Oceanic Steamship Co.; Olympic Steamship Co., Inc.; Overseas Shipping Company; Pacific Australia Direct Line; Trans-Austral Shipping Pty. Ltd.; Pacific Far East Line, Inc.; Pacific Islands Transport Line; Philippine President Lines; P & O Lines (North America) Inc.; Reliable Line Service; Rothschild Washington Stevedoring Co.; Sea-Land Service, Inc.; Seatrain International, S.A.; Seatrain Lines, California; Seattle Bulk Loading Terminal, Inc.; Seattle Stevedore Company; States Marine Lines; States Steamship Company; Taiwan Navigation Co., Ltd.; Tokai Shipping Co., Ltd.; Transpacific Transportation Co.; United Philippine Lines, Inc.; United States Lines, Inc.; Westfal-Larsen Line; Williams, Dimond & Co.; and Yamashita-Shinnihon Steamship Co., Ltd. are members of the Pacific Maritime Association which operate in Seattle.

8. Defendant International Longshoremen's and Warehousemen's Union is an unincorporated association operating in all ports on the West Coast of the United States.

9. Defendant International Longshoremen's and Warehousemen's Union Local 19 is an unincorporated association operating on the Seattle waterfront with its main office in Seattle, Washington. Its members perform longshore functions at the Port of Seattle marine terminal facilities.

10. Defendant International Longshoremen's and Warehousemen's Union Local 52 is an unincorporated association operating on the Seattle waterfront with its main office in Seattle, Washington. Its members perform the "checking" function at the Port of Seattle marine terminal facilities.

DEFINITIONS

11. As used herein:

(a) "Shipper" means the person who contracts for the delivery of cargo and directs its method of shipment.

(b) "Consignee" means the person to whom the cargo is shipped.

(c) "Ocean carrier" means the steamship line which is employed by the shipper for the water transportation of cargo.

(d) "Ocean bill of lading" means the written contract of affreightment between the shipper and ocean carrier; the bill of lading designates the consignee and the location for the delivery of the cargo to the consignee or his agent.

(e) "Container" means a re-usable metal, wooden, or plastic van into which goods are packed for carriage by sea. Containers are said to be "intermodal" in that they may be off loaded from ocean vessels and put directly aboard motor and rail carriers for inland transportation without disturbing the contents thereof.

(f) "Container yard" (CY) is a location where containers loaded with goods are received or delivered, to or from the vessel or to or from the inland carrier. A shipper may designate CY delivery on the bill of lading. The ocean carrier's responsibility for the container cargo under an ocean bill of lading specifying "CY delivery" is terminated upon the delivery of the loaded container at the container yard to the consignee or his agent. Container yards are operated by both PMA members and the Port of Seattle.

(g) "Container Freight Station" (CFS) is a facility operated by a PMA member ocean carrier or his PMA member agent where containers are loaded with goods

or unstuffed of goods immediately prior or subsequent to a movement by water. A shipper may designate CFS delivery on the bill of lading. The ocean carrier's responsibility for the container cargo is terminated under an ocean bill of lading specifying "CFS delivery" when the cargo is unstuffed from the container and tendered to the consignee or his agent in break-bulk (or loose) form. The shipper pays an additional charge for CFS work under the rates published by the ocean carrier in its tariff.

(h) "Warehouse" means a structure used to hold goods for storage. Cargo may move from either a CY or CFS to a warehouse. The Port of Seattle owns and operates certain warehouses for the storage of ocean borne export-import cargo.

(i) "Overland Common Point" (OCP) is a geographical designation for the destination of export-import cargo. In the context of this trade OCP cargo means destined for (or originating from) overland common points east of Denver, Colorado. Most OCP cargo flowing through the Port of Seattle is import cargo in containers. OCP cargo is distinguished from "local" cargo destined to (or originating from) points west of Denver.

RELEVANT MARKET

12. The market and line of commerce herein involved is export-import containerized cargo to or from ports on the west coast of the United States, including the handling and storage of such cargo while at such ports.

COMMERCE INVOLVED

13. Plaintiff and all defendants are involved in one or more phases of the continuous movement of containerized cargo in interstate and foreign commerce.

14. The movement of containerized cargo is a multi-million dollar industry. The advent of the container has revolutionized the shipping industry. Containerization of cargo in export-import trade is expanding rapidly and is supplanting break-bulk shipments as to much of

the interstate and foreign commerce of West Coast ports. The industry involves the ocean shipment of containers by steamship, barge or other vessel, the inland transportation by rail, truck or other means, the handling and storage of such containers at port marine terminals, the stuffing and unstuffing of such containers, the warehousing of some of the contents of such containers, and the services of ships agents, customs house brokers, and others. Shippers and consignees of substantial quantities of cargo specify container shipment in order to minimize soilage, pilferage or breakage and to minimize delivery time, and pay a premium for the service.

15. In all the foregoing respects interstate and foreign commerce has been, and is being, restrained and affected by the antitrust violations herein alleged.

PORT OF SEATTLE TRAFFIC

16. The Port of Seattle is charged by statute with the responsibility for, *inter alia*, the promotion and development of water borne commerce through the harbor of Seattle.

17. The Port of Seattle enjoys extensive water borne traffic with the vessels of many nations. Annually over 2,500 vessels visit the Port of Seattle in offshore trade. The Port has, in the past decade, experienced greatly increased business, in part due to the aggressive trade development program initiated by Port management. Seattle foresaw the impact of containerization on international trade and made extensive capital investments to attract container traffic to the Port. Seattle's volume of container traffic rose almost 400% between 1960 and 1970, with a 55% increase from 1969 to 1970 alone. Seattle has surpassed all Pacific Coast ports in OCP traffic and presently accounts for approximately 40% of West Coast OCP imports. Unless restrained by the illegal conduct of the defendants herein, the Port will continue to experience rapid growth in containerized traffic through its Harbor. The Port plans further extensive capital investment to attract and support its growing water-borne commerce.

18. Unlike other West Coast ports including those in California, the Port of Seattle is an "operating port;" it operates marine terminals and warehouses rather than simply acting as a landlord of facilities leased to carriers and others. The warehousing program of the Port of Seattle, in particular, has attracted considerable traffic through the Port's harbor. Shippers who ship through the Port of Seattle rely on the Port's warehouses for the storage of goods as part of their overall national distribution plans. While OCP import shippers send the great majority of their containerized cargo straight through to its ultimate inland destination, they usually employ Port warehouses for the storage of a portion of their goods. The warehousing program of the Port is an integral part of the functions performed by the Port for shippers. Shippers will not use the Port's facilities for "straight through" OCP shipments unless warehousing is available from the Port of Seattle. Without warehouse capability, the Port will lose both cargo that would otherwise have been warehoused and OCP cargo moving through the Port without warehousing.

19. On December 31, 1971, the book value of the Port of Seattle's investments in marine land, facilities and equipment was $137,605,788. Total contracts in force or awarded for construction or improvement of Port of Seattle marine facilities then exceeded $11,634,025. Terminal 106, a warehouse complex for storage, warehousing and handling of OCP cargo, was purchased by the Port in 1970 for $4,000,000.

20. Gross revenue of the Port of Seattle from marine operations increased from $4,959,543 in 1966, to $11,865,190 in 1971; while tonnage at Port operated or leased terminals increased from 2,556,412 tons in 1966, to 2,920,883 in 1969, to 3,363,683 in 1970.

DESCRIPTION OF THE UNLAWFUL CONSPIRACY, COMBINATION AND ATTEMPTS TO MONOPOLIZE

21. Commencing at some time in the past, the exact date being presently unknown to plaintiff, and continuing up to and including the date of the filing of this

complaint, the defendants have combined together and with other persons, associations and corporations, the identities of some of whom are still unknown to plaintiffs, and, acting concertedly together through agreement and understanding, have adopted and conducted common plans and programs having the following objectives and results:

(a) To monopolize, dominate and control the business of moving containerized cargo in foreign and interstate commerce from and to West Coast ports, including the handling and storage of such cargo while at such Ports;

(b) To force shippers and consignees to deal with nonmembers of the defendant PMA, including the plaintiff, on terms substantially less advantageous than with members of the PMA, thereby enforcing a concerted boycott by shippers and consignees of nonmembers of the defendant PMA. The effect of such boycott would be to make it difficult or impossible for non-members to remain in business;

(c) To use their monopoly power and domination in the market to eliminate plaintiff as a non-PMA member competitor;

(d) To force plaintiff, and others, to join the Pacific Maritime Association in order to exert control over their activities;

(e) To divert cargo destined for storage at warehouses operated by the Port of Seattle to warehouses operated by members of the PMA, with the attendant diversion of revenue from the Port of Seattle to PMA members;

(f) To achieve for themselves additional revenue which would not otherwise be earned but for the unlawful conduct herein alleged; and

(g) To regulate, dominate and restrain interstate and foreign commerce in containerized cargo, concentrate containerized cargo at ports in which members of the Pacific Maritime Association have the greatest financial interest and to otherwise cause the businesses of moving and storing containerized cargo to be operated under artificial and non-competitive conditions.

ACTS AND PROGRAMS IN FURTHERANCE OF THE CONSPIRACY AND COMBINATION AND ATTEMPTS TO MONOPOLIZE

Defendants have committed and engaged in the following acts and programs in carrying out the aforesaid conspiracy and combination in restraint of trade and attempts to monopolize:

22. The PMA has been and continues to be dominated, directed and controlled by ocean carriers, stevedoring companies and other who have their headquarters and large financial investments within the State of California. The voting and other provisions of its organizational agreement and bylaws of the FHA are designed to perpetuate the domination of such members over the policies and affairs of the PMA, no matter how many additional members are admitted. Should the Port of Seattle be forced to join the PMA, the Port of Seattle would consistently be outvoted on matters of concern to it; for example, ocean carriers have one vote for each 50,000 tons of cargo, while port members only have one vote; 11 of the 15 directors of the PMA are selected by ocean carriers and the other four are selected by the remaining members; 6 of the 7 director members of the PMA Executive Committee must be ocean carrier selectees; and the Board of Directors may by majority vote suspend or expel any member.

23. From and after December 23, 1970, defendant PMA has engaged in an attempt to compel the Port of Seattle to become a PMA member. The defendant PMA has threatened to exclude non-PMA members including the Port of Seattle, from the use they now enjoy of PMA-ILWU hiring halls and their participation in the PMA-ILWU benefit plans. The unlawful activity of the defendant PMA and defendant ILWU complained of herein is motivated in substantial measure by defendant PMA's desire to compel the Port of Seattle to become a PMA member or, in the alternative, to remove the Port of Seattle from competition with PMA members.

24. The defendants entered into a MEMORANDUM OF UNDERSTANDING between PMA and the ILWU, dated February 10, 1972. In that agreement there is a provision under the heading of APPLICABLE TO LONGSHORE AND CLERKS at paragraph V at page 25, which amends the Coast Container Supplement by the insertion of the following contractual provision:

> "1.55 Containers originating at or destined for delivery to a non-PMA member facility employing ILWU labor within the Port Area CFS Zone shall be stuffed or unstuffed by ILWU labor employed by an employer's signatory to the PCL & CA [Pacific Coast Longshore and Checkers' Agreement] or this CFS [Container Freight Station] Supplement, unless cargo in such containers has tax-free status under Section 1.531(c) through (g).

The above cited provision is hereinafter referred to as "the provision."

25. The stated purpose of defendants in adopting the provision was to put the Port of Seattle out of business.

26. Prior to the implementation of the contract provision referred to herein, and for many years, containers on a "CY delivery bill of lading destined for a Port warehouse moved directly from the container yard to the Port warehouses intact. With the implementation of the unlawful contract provision, defendants have now refused to release containers from container yards unless and until such containers were first delivered to CFS transit sheds for unstuffing by employees of defendant PMA members who belong to defendant ILWU locals.

EFFECTS OF THE VIOLATIONS

The intended and actual effects and results of the combination and conspiracy in restraint of trade and to monopolize and of the attempts to monopolize hereinabove alleged have been and are:

27. Implementation of the contractural provision complained of herein would require containers shipped or

"CY delivery" bill of lading to be delivered to a CFS station operated by a PMA member and there undergo an unstuffing process. The contents of the container would then be delivered in break-bulk form to the consignee or his agent for carriage to a Port warehouse. At the Port warehouse, the cargo would again be unloaded and then sorted and placed in storage. The effect of the unlawful contract, therefore, is to require containers destined for Port warehouses to undergo a completely useless and wasteful process which has no utility to the shipper and only results in expense, damage, pilferage, harassment, and delay. By the provisions of the same contract, however, containers destined for warehouses operated by PMA members would be delivered directly to the PMA member warehouse without any requirement for unstuffing at a CFS.

28. The plaintiff has incurred additional cost and has suffered consequent damage in taking emergency measures to protect containerized cargo destined for plaintiff's warehouses. Prior to and continuing to the date hereof, the defendants and the coconspirators have wholly refused to permit the plaintiff to take such emergency measures, and containerized cargo is stranded on the docks.

29. The useless work which the defendants now require of containers destined for Port warehouses will restrict container cargo flowing through the Port's harbor because of:

(a) The increased breakage and pilferage attendant upon the additional stuffing or unstuffing process; or

(b) The increased time in transit of goods subjected to the additional stuffing and unstuffing process.

30. If the unlawful contract is implemented, the financial and other burden imposed by the wholly unnecessary and wasteful process of unstuffing will cause shippers to utilize other PMA member warehouse facilities and ship through other ports.

31. Defendants have attained and exercised, and now exercise monopoly power in the business of movement of containerized cargo into and out of West Coast ports.

32. Competition in this business has been and is being substantially eliminated or impaired, and plaintiff and the public have been and are being denied the rights and benefits of free and open competition.

33. Interstate and foreign commerce has been and is being substantially restrained and affected.

INJURY TO PLAINTIFF

34. As a direct result of the combination and conspiracy in restraint of trade and to monopolize and of the attempts to monopolize hereinabove alleged, plaintiff has been and will be injured in its business and property to the extent of the additional cost it has incurred and will incur in taking emergency protective measures and will suffer permanent, irreparable harm to its business and property in that it will irrevocably lose a substantial portion of the containerized cargo it has successfully attracted to the Port of Seattle, it will suffer the loss or substantial impairment of its investment in marine terminals, container handling equipment, warehouses and other assets, and it will be destroyed as an effective future competitor for containerized traffic. The dollar amount of such loss is presently undetermined.

INJUNCTION NECESSARY

35. An emergency exists. Containers destined for Port of Seattle warehouses sit on the docks of the Port and cannot be moved without additional processing through a PMA member operated CFS station. Shippers have announced their intention to direct other shipments through other ports and to PMA member warehouse facilities unless and until their containers can be delivered intact to Port warehouses. Every day lost produces a crisis for the Port and for its shipping customers. Unless the continuing acts of defendants in violation of the antitrust laws, particularly the enforcement of the above-described unlawful contract, are immediately restrained, plaintiff will suffer immediate and irreparable damage to its business and property through continuing mone-

tary loss and loss of its customers. Conditions and circumstance exist which would constrain a court of equity, under rules governing such proceedings, to grant injunctive relief against the continuing unlawful acts of the defendants. Unless defendants are thus enjoined by the Court, they will continue to combine and conspire in restraint of trade and to monopolize, and will continue to implement and enforce their unlawful contract to destroy and eliminate the Port of Seattle as a competitor.

STATUTES VIOLATED

36. The combination and conspiracy in restraint of trade and to monopolize and the attempts to monopolize hereinabove alleged have been and are in violation of Section 1 of the Sherman Act (15 U.S.C. § 1); Section 2 of the Sherman Act (15 U.S.C. § 2); and Section 3 of the Clayton Act (15 U.S.C. § 14).

CO-CONSPIRATORS

37. In performing and carrying out the conspiracy and combination in restraint of trade and to monopolize and the attempt to monopolize hereinabove alleged, defendants have combined and conspired with Anacortes Stevedoring Company; Associated Banning Company; Auto Terminal International; Bellingham Stevedoring Company; Benicia Port Terminal Company; The Blue Star Line, Inc.; Brady-Hamilton Stevedore Co.; California Stevedore & Ballast Co.; California United Terminals; Canadian Gulf Line, Ltd.; Capitol Stevedore Company; CFS Corporation; Coast Stevedore Company; Consolidated Marine, Inc.; Consolidated Stevedoring Co., Inc.; Crescent City Marine Ways & Drydock Co., Inc.; Diablo Service Corporation; The East Asiatic Co., Inc.; Elvalsons-Stevedoring Division; Everett Stevedoring Company; Fibrex & SDipping Co., Inc.; General Stevedore & Ballast Co.; Howard Terminal; Independent Stevedore Company; Indies Terminal Company; Interolsen Agencies, Inc.; W. J. Jones & Son, Inc.; Los Angeles Container Terminal Co., Inc.; Maersk Line Agency; Marine Terminals Corporation; Marine Terminals Corporation of L.A.; Matson Terminals Inc.; Metropolitan Stevedore Company; National Lines Bureau, Inc.; Fred F. Noonan Company, Inc.; Norkerr Services; Norsk Pacific Steamship Co., Ltd.; Northwest Marine Service Co.; Oakland Container Terminal Co., Inc.; Ocean Terminals Company; Olympia Stevedoring Co.; Olympic Peninsula Stevedoring Co.; Oregon Stevedoring Company; Pacific Oriental Terminal Co.; Parr-Richmond Terminal Co.; Portland Lines Bureau; Portland Stevedoring Company; Port of Astoria; Port of Kalama; Port of Vancouver; San Francisco Line Service Co.; San Francisco Stevedoring Co., Inc.; Scrap Loaders, Inc.; Seatrain Terminals of California, Inc.; Shamrock Steamship Company; Shipmasters' Assistants' Assn.; Showa Kaiun Kaisha, Ltd.; Signal Terminals, Inc.; Star Terminal Co., Inc.; Stockton Stevedore Warehouse Co.; Tacoma Line Handling Co.; Tacoma Stevedore & Terminal Co.; Transocean Gateway Corporation; Twin Harbor Stevedoring Co.; Universal Terminal & Stevedoring Corp. of Calif.; Vaasa Line OY; Western Stevedoring & Terminal Corp.; Westfal-Larsen Company, Inc.; Westfall Stevedore Co.; and Willapa Harbor Stevedoring Co., who are members of PMA not operating at the Port of Seattle, and others presently not known to plaintiff.

PRAYER

38. Plaintiff prays judgment against the defendants and each of them as follows:

(a) That the Court issue its injunction permanently restraining defendants and each of them from implementing and enforcing their unlawful contract described above; or from in any other way, directly or indirectly, effecting the stuffing and unstuffing process it requires; or from in any way, directly or indirectly, unlawfully interfering with the delivery of loaded containers to warehouses operated by the Port of Seattle; and from engaging in the unlawful conspiracy, combination and conduct in violation of the antitrust laws hereinabove alleged;

(b) That plaintiff have judgment in the amount of damages determined to have been sustained by it, and that the said amount be trebled by the Court, as required by law;

(c) That plaintiff have judgment for its costs of this action; and

(d) That plaintiff have judgment as provided by law for attorney fees in an amount determined by the Court to be reasonable.

JURY DEMAND

Plaintiff respectfully demands a jury pursuant to Rule 38(b), Federal Rules of Civil Procedure.

DATED: March —, 1972.

CULP, DWYER, GUTERSON & GRADER
PRESTON, THORGRIMSON, STARIN,
ELLIS & HOLMAN

By _____
LOUIS F. NAWROT, JR.

By _____
ROBERT A. KEOLKER

By _____
GERALD GRINSTEIN

By _____
MICHAEL B. CRUTCHER
Attorneys for Plaintiff

BEFORE THE FEDERAL MARITIME COMMISSION

Docket No. 72-48

[Received Jan. 12, 1973]

PACIFIC MARITIME ASSOCIATION—COOPERATIVE WORKING ARRANGEMENTS; POSSIBLE VIOLATIONS OF SECTIONS 15, 16 AND 17, SHIPPING ACT, 1916

REPLY OF HEARING COUNSEL TO MEMORANDA OF LAW

I. INTRODUCTION

In our memorandum of law submitted to the Commission on December 15, 1972, Hearing Counsel took the position that the agreements alleged to exist between the PMA and ILWU, although not without Shipping Act implications, nevertheless, primarily involved antitrust and related labor policies and basically a determination whether parties engaged in collective bargaining exceeded the scope of legitimate bargaining. We therefore recommended that the Commission find that the determination of this issue be left to the courts and the NLRB where there are pending three antitrust cases and one administrative proceeding. Should the courts and the NLRB ultimately find the agreements lawful and specific practices flowing therefrom raise specific and primary Shipping Act problems, then the Commission could determine the obligations of the parties under that Act with due consideration to labor policies.

The position as expressed above assumes that the allegations of the eight petitioning ports regarding a combination and conspiracy between the PMA and ILWU in restraint of trade are true in fact. If so, we submit, the agreements bear a striking resemblance to the situation in *United Mine Workers* v. *Pennington*, 381 U.S. 657 (1965), in which the court held an agreement between a group of employers and the mine workers' union to force terms and conditions of employment on other

employers outside of the immediate collective bargaining unit to be violative of the antitrust laws. Not surprisingly, as the reply memoranda of the PMA and ILWU indicate, the facts as to the existence of the alleged combination and conspiracy are vigorously disputed. Furthermore, the PMA and ILWU contend that the subject agreements were the product of intensive good-faith collective bargaining in which both the PMA and ILWU obtained desired benefits without any intention of eliminating competition from the petitioning ports.

II. THE CONTENTIONS OF THE PARTIES CONFIRM THAT THE MATTERS IN QUESTION RAISE ISSUES WHICH ARE PRIMARILY ANTITRUST AND LABOR-RELATED IN NATURE AND SHOULD BE LEFT TO THE COURTS AND THE NLRB WHERE THEY ARE NOW PENDING.

We submit that the memoranda of the parties confirm the validity of our position. Thus, even if every question of fact is resolved in favor of the petitioning ports the activity complained of appears to constitute a classic antitrust violation in which the parties to collective bargaining have exceeded the scope of permissible bargaining by attempting to eliminate outside competition either by withholding labor or by forcing outside employers into PMA membership. As the ports summarize their contentions:

> "The facts are clear that the Supplemental Memorandum imposes obligations upon the petitioner ports . . . to pay certain fringe benefits and, concurrently, to adhere to the labor policies of the PMA and accept all of the conditions of the new Coast Agreement even though to do so would result in abrogating existing labor contracts with locals of the ILWU which, because of differences in methods of operation, would be more costly to those ports than to other terminal operators in other localities." Ports' Memorandum, p. 19.

Again assuming that all the facts alleged by the ports are true, it would appear that the appropriate avenue of relief for the ports is in the area of antitrust law by means of injunctions, treble damages, etc. If, on the other hand, the PMA and ILWU are correct in their contention that their agreement is not directed against the ports but only against nonmember employers for valid reasons, and by lawful means, then it would appear that the parties have acted within the bounds of permissible collective bargaining, in which case, according to the Commission's decision in *United Stevedoring Corporation* v. *Boston Shipping Association*, the agreements would enjoy the so-called labor exemption from regulatory law.

An analysis of the contentions of the various parties demonstrates that the subject agreements essentially involve antitrust and labor-related matters. Thus, the PMA asserts that the matter of nonmember participation in PMA-ILWU programs has long been of concern of the PMA and ILWU. It is contended that nonmembers have enjoyed the benefits of the joint PMA-ILWU work force and other programs without incurring the same obligations as PMA members. It is further asserted that the SMU No. 4 (the Non-Member Participation Agreement) is merely designed to permit PMA members to compete on an equal basis with non-PMA member stevedores who enjoy longshoremen at industrial terminals and that the purpose and intent of SMU No. 4 is that non-member employers who wish to obtain a part of the industry-wide system of benefits which the PMA and ILWU have built up over the years should accept the responsibilities as do PMA members. The ILWU states that it believes this position of the PMA to be fair and concurs with the PMA that the entire matter was the subject of give-and-take bargaining between the PMA and ILWU, with both parties ultimately obtaining benefits, i.e. the PMA strengthening its multi-employer bargaining group and the ILWU seeking its goal of uniform contracts. The PMA finally contends that this type of agreement is akin to a "most favored nation" clause by which employers protect themselves against discriminatory treatment by unions with the sanction of the courts

and the NLRB and adds that a mere coincidence of motives between the PMA and ILWU does not demonstrate a conspiracy in violation of the antitrust laws. The PMA concludes that the agreement is "intimately related" to the collective bargaining process and is a joint rather than an exclusive employer undertaking, and should therefore be left to the NLRB and the courts under the antitrust laws.

Of course, the ports dispute these facts, contending that the agreement is directed against them with severe anticompetitive effect as part of a longtime plan to force the ports into PMA membership or to subject them to PMA policies in derogation of their statutory obligations and local contracts with ILWU locals in the Pacific Northwest. The ports contend that they are willing to share in the PMA-ILWU programs as they have done in the past but that they are unable to comply with all the obligations of PMA members for a variety of reasons relating to their status under the law, local contracts, etc. The ports flatly label the SMU No. 4 as "compulsory unionism" i.e. an attempt by the PMA and ILWU to force them into PMA membership.

The Port of Seattle, an intervenor in this proceeding, contends that the PMA has for some time conducted a concerted campaign to have Seattle become a PMA member and alleges a "history of collusion" between the PMA and ILWU in furtherance of this objective. Seattle furthermore contends that both the PMA and ILWU have combined and conspired in restraint of trade in violation of the antitrust laws and states that "[t]he Port intends to vigorously press" the antitrust case it has brought before the U.S. District Court in Seattle. Although the Port contends that the Commission has jurisdiction over both the February 10 and April 25, 1972 agreements (i.e. the Memorandum of Understanding relating to container freight stations and the SMU No. 4) the Port asks the Commission to stay its proceedings with respect to the February agreement so that the Port may proceed to litigate its case before the court. As the Port states:

> "Such a severance and postponement of the exercise of Commission jurisdiction will avoid unnecessary collisions with conflicting regulatory jurisdictions, will avoid multiplicity of actions, will avoid wastefullness inherent in multiple proceedings, and will not cause harm to a party, to the public interest or to the jurisdictional authority of the Commission." (Memorandum of Port of Seattle, p. 19).

Finally, the Port contends that should the Commission exercise its jurisdiction over the basic collective bargaining agreement (including the February agreement) the Commission would become involved in a time consuming and complicated undertaking involving such things as an inquiry into the good faith of the parties engaged in collective bargaining, whether particular provisions were mandatory subjects of bargaining, and various labor policies of concern to the NLRB.

According to the Council of North Atlantic Shipping Associations (CONASA), another intervenor, the PMA-ILWU agreements were proper and mandatory subjects of bargaining involving fundamental union interests and were the result of intensive negotiations. Furthemore, CONASA contends, the agreements affecting non-members of the PMA are proper since they were designed to insure that the union will obtain its guaranteed benefits and to close a "gaping loophole" whereby "non-members of PMA enjoyed the benefits of the PMA-ILWU collective agreements but were not contractually bound by its obligations." (Memorandum of CONASA, p. 11). For these and other reasons CONASA contends that these matters should be left to the courts and the NLRB.[1]

It is thus readily apparent, we submit, from a mere recitation of the various contentions of the parties, that the subject agreements and activities of the PMA and ILWU raise issues primarily of a labor and antitrust nature and that if the Commission pursued the investigation it would become enmeshed in areas foreign to its expertise. Furthemore, such an investigation would serve

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[1] CONASA makes a number of additional arguments which were raised by some parties and rejected by the Commission in the *BSA* case. These relate to the alleged lack of jurisdiction over the PMA as a "mixed membership" non-transportation entity.

to impede the parties seeking relief in the pending antitrust cases before the courts. We do not agree with the PMA that Commission jurisdiction must always be lacking in labor-related areas if the matter is "intimately related" to collective bargaining and is not exclusively reserved to employers.[2] Nevertheless in this case, we submit, the central issue primarily concerns the scope of permissible collective bargaining rather than violations of the Shipping Act, an issue which the courts and the NLRB are well equipped to determine in the cases now pending before them.

III. CONCLUSIONS

The position which Hearing Counsel have taken in this proceeding, we submit, has been amply validated by the various memoranda of the parties. Thus, it is our position that the activities and agreements of the PMA and ILWU which the petitioning ports and intervenor Port of Seattle contend are subject to the Commission's jurisdiction raise essentially antitrust and labor-related problems which should be resolved in the courts and before the NLRB where they indeed are now pending. It is readily apparent upon a reading of the various con-

[2] The PMA in effect collaterally attacks the Commission's decision in the *BSA* case in which the Commission enunciated several criteria as guidelines in determining whether a particular activity enjoyed the so-called labor exemption from antitrust or regulatory law. Instead the PMA offers its own simplistic standard. We submit, the Commission has considered the contentions of the PMA and numerous other parties in the *BSA* case regarding the proper standard to be employed and has found simplistic standards such as that now proposed by the PMA to be inadequate. Furthermore, contrary to the PMA's contentions, the Commission acted properly in enunciating its standards in the *BSA* case since this decision was responsive to the admonition of the U.S. Court of Appeals and the various parties who had opposed the Commission's previous decision on the ground that it had failed to consider or define the scope of the labor exemption. Significantly, another intervenor, the Council of North Atlantic Shipping Associations (CONASA) which otherwise agrees with the position of PMA, believes that the Commission properly looked to the antitrust cases for guidance in formulating its labor-exemption criteria. (See Memorandum of Law of CONASA, p. 18).

tentions of the parties that the central issue relates to whether the parties to collective bargaining have exceeded the scope of permissible bargaining and have consequently violated the antitrust laws, very much as did the employers and union in *United Mine Workers* v. *Pennington*. Not surprisingly the relevant facts are vigorously disputed, the ports contending that the PMA and ILWU have conspired and combined to eliminate them from competition by forcing them into PMA membership and the PMA, ILWU, and other parties contending that the agreements were proper and lawful and designed to achieve legitimate employer and union goals.

No matter how the dispute in facts may be resolved, the entire matter primarily lies in an area foreign to the Commission's expertise. Therefore, we recommend that the Commission leave these matters to the courts and the NLRB who are well equipped to deal with them.

Respectfully submitted,

Donald J. Brunner, Director
Bureau of Hearing Counsel

Norman D. Kline
Hearing Counsel

Washington, D.C.
January 12, 1973

[Received Jan. 22, 1973]

AFFIDAVIT OF-FACTS OF PETITIONER PORTS RELATIVE TO REPLY TO MEMORANDUM OF LAW AND AFFIDAVITS OF FACTS OF P.M.A. AND I.L.W.U.

STATE OF OREGON)
)
COUNTY OF MULTNOMAH)

I, MILTON A. MOWAT, being first duly sworn upon oath depose and say: I am the Manager, Regulatory Affairs, of the Port of Portland, one of the petitioner ports. I make this affidavit on behalf of all of the petitioner ports in the interest of expedition and for the convenience of all parties concerned.

The matters set forth in this affidavit were supplied to me, at my request, by the cognizant officials of each individual port, for incorporation in this affidavit on behalf of all petitioner ports.

The Legal Memorandum of P.M.A. states at the bottom of page 29 and top of page 30: "Moreover, as is shown in the affidavits of Mr. Flynn, Mr. Goodenough and Mr. Ward (Mr. Huntsinger), longshoremen and clerks are available to nonmembers outside of the joint work force, in the event nonmembers choose not to sign Supplement No. 4." Mr. Flynn said on Page 7 and Mr. Huntsinger on Page 3 of their affidavits that: "There are men who perform longshore and clerk functions who are not part of the registered I.L.W.U.-P.M.A. joint work force who are available to nonmembers who do not sign the Participation Agreement".

These statements are misleading at best. A substantial portion of the over $5 million paid annually by the Northwest petitioner ports in I.L.W.U. payroll is for the services of skilled longshoremen such as straddle carrier drivers, lift truck drivers, Wagner log handler drivers and container, whirley and bridge crane operators. A longshoreman must be registered by the P.M.A.-I.L.W.U. before he would be considered for the training necessary

members who have helped in the training

of this work force." PMA

to qualify in one or more of these skill categories mentioned above. Therefore, the only longshoremen that could be available to nonmembers of P.M.A. would be casual, non-skilled longshoremen. The Northwest port petitioners are all operating ports. That means that they actually supervise and perform with I.L.W.U. labor the many marine terminal services that require the use of and skilled operators for the specialized equipment they own to efficiently handle marine cargo. If the petitioner ports were denied the skilled longshoremen they require marine commerce through these ports would stop to detriment of the P.M.A. vessel and stevedore members, the I.L.W.U. members, the ports and all those businesses and individuals whose livelihood depends upon the movement of ocean commerce through these ports.

It is stated on page 30 of the P.M.A. Legal Memorandum that: "The Nonmember Participation Agreement merely withholds men jointly trained and registered by P.M.A. and the I.L.W.U. from nonmembers who are unwilling to undertake the obligations incurred by P.M.A. tries to give the impression that only P.M.A. members have helped in the training of the I.L.W.U. work force. This is not true. The Port of Portland has and continues to make its container cranes, whirley cranes, water crane, mobile crane, straddle carriers and container lift trucks available to the P.M.A. and I.L.W.U. for the training of operators at a token charge of $1.00 per hour.

The Legal Memorandum of P.M.A. on page 5 states in regard to the relationship between P.M.A. and petitioner ports that: ". . . it not only avails them of the P.M.A.-I.L.W.U. joint work force, but permits them to offer substantial welfare programs to their employees (*with a minimum of expenditure on their part.*" (Emphasis supplied). Mr. Flynn said on page 8 of his affidavit that: "Such a nonmember has always paid (and is still paying since Supplement No. 4 is suspended) manhour dues *which helps defray the cost, though not the entire P.M.A. cost*, of dispatching hall and administration of the fringe benefit program." (Emphasis supplied). P.M.A. would like to give the impression that the petitioner ports are freeloaders when that is abso-

lutely not the case. P.M.A. sets the rates for dues and assessments. If P.M.A. has not set the dues and assessments at a level high enough to cover their full cost they have no one to blame but themselves. Mr. Meyers, the treasurer of P.M.A., sets this issue to rest where he states on page 2 of his affidavit: "The Northwest Port Authorities are and have been paying P.M.A. manhour dues on the labor they employ because they use the joint P.M.A.-I.L.W.U. dispatch hall. They also pay into the various P.M.A.-I.L.W.U. fringe benefit funds *in the same manner as P.M.A. members* . . .". Emphasis supplied.

Mr. Flynn states further on page 8 of his affidavit that: "One of the obligations which petitioners object to is the provision of Article 6 that the nonmember participant shall pay to the P.M.A. 'an amount equal to the dues and assessments that a P.M.A. member would pay." This statement is totally untrue. Petitioner ports stated on page 15 in their Affidavits of Fact and Memorandum of Law dated December 12, 1972, that they: ". . . are perfectly willing to continue to share in the cost of the joint work force as do the members of P.M.A.; to share in the administrative costs of the I.L.W.U.-P.M.A. Pension Plan, the Welfare Plan, the P.M.A. Vacation Plans, and the I.L.W.U.-P.M.A. Guarantee Plans in accordance with the terms applicable to such participation, including making payments into such plans at the same rates and at the same times as members of the P.M.A. are required to make them; to use the P.M.A. central pay system and central records office and make payments of the amounts required thereunder at the same time and in the same manner as prescribed for members of P.M.A.

Dated this 12th day of January, 1973.

/s/ Milton A. Mowat
MILTON A. MOWAT

Subscribed and sworn to before me this 12th day of January, 1973.

/s/ [Illegible]
Notary Public for Oregon
My Commission expires:
3/23/76

BEFORE THE FEDERAL MARITIME COMMISSION

[Received Oct. 24, 1972]

[Caption Omitted]

SUPPLEMENT TO ORIGINAL PETITION
BY PETITIONER PORTS

Come now the petitioner ports and file this Supplemental Petition pursuant to Rule 502.70 and in support thereof respectfully represent and show:

I

Petitioner ports on July 25, 1972 filed a Petition for Investigation under Section 22 of the Shipping Act of 1916, alleging *inter alia* that the Pacific Maritime Association (herein called "PMA") and the International Longshoremen's and Warehousemen's Union (herein called "ILWU") had entered into a so-called Supplemental Memorandum of Understanding, dated April 25, 1972, and that the said Memorandum and practices proposed by the PMA and ILWU pursuant thereto were unlawful, detrimental to the commerce of the United States and the general public interest, unfair, unjust, discriminatory and unduly prejudicial to the petitioner ports and to individuals and business concerns interested in and dependent upon the petitioner ports.

II

Thereafter, and as a consequence of said Petition, the Federal Maritime Commission initiated proceedings which, if pursued, would have resulted in the requested investigation. The matter is now before the Commission

and a decision is pending with respect to jurisdictional issues; i.e., (1) whether the master collective bargaining agreement and the Supplemental Memorandum of Understanding No. 4 between the PMA and the ILWU embody any agreements between and among members of the PMA, which agreements are subject to the requirements of Section 15 of the Shipping Act of 1916; and (2) whether any labor policy considerations would operate to exempt these agreements or practices resulting therefrom from any provisions of Sections 15, 16 or 17 of the Shipping Act of 1916.

III

During the pendency of said proceedings, as mentioned above in Paragraph II, and on or about June 24, 1973, the PMA and ILWU entered into a revised version of Supplemental Memorandum of Understanding No. 4, a copy of which revision is attached as Exhibit "A" and made a part hereof. Said revised version of the Supplemental Memorandum is now a part of the current master collective bargaining agreement between the PMA and the ILWU. Said revised Supplemental Memorandum is implemented, by negative inference, by depriving longshore labor, longshoremen, clerks and walking bosses, of vacation, welfare, pension, pay guarantee, promotion, transfer, advancement in registered status, seniority and "all other aspects of [the employee's] work history as a member of the joint work force." This relegation to waterfront "purgatory" status is imposed by negative inference under the "NOTE" to Section 8 of the revised Supplemental Memorandum. Petitioner ports have at all times provided employees with all such benefits on the same basis as employers who are members of PMA and desire to continue providing all such benefits. This, of course, is in recognition of the single, indivisible work force which is available to Northwest ports, which work force is exclusively controlled by ILWU and PMA.

The revised version of the said Supplemental Memorandum does not and would not materially differ either in purpose or effect from the original Supplemental

Memorandum of Understanding No. 4. Said revised Supplemental Memorandum titled, "ILWU-PMA Nonmember Participation Agreement," imposes anticompetitive restrictions which are identical in effect to Supplemental Memorandum No. 4 upon Pacific Northwest ports, nonmembers of PMA, as a condition of utilizing the longshore and related work force over which PMA and ILWU exercise monopoly control through exclusive joint registration procedures. More specifically, said revised Nonmember Participation Agreement purports to:

1. Require adherence of non-PMA members to all the terms of agreements to which they are not privy or parties as a condition to the availability of labor in the Northwest longshore industry. This is accomplished by denying access to the joint work force over which ILWU and PMA exercise exclusive control in such industry. There is no alternative source of manpower by reason of such exclusive control.

2. Require adherence to all provisions of agreements between PMA and ILWU with respect to the selection of men for inclusion in such work force, thereby perpetuating the monopoly control exercised by PMA and ILWU over the work force in West Coast shipping industry.

3. Require adherence by petitioners, notwithstanding their status as public ports and governmental subdivisions, to work stoppages as dictated by PMA by compelling what may be unlawful closure of all petitioner ports by reason of labor disputes to which they are not parties.

4. Require continued liability for PMA assessments, dues and other obligations notwithstanding denial, for unspecified reasons, of any right by petitioner ports to obtain longshore labor through established and customary dispatch procedures.

5. Require, through negative inference, petitioner ports to curtail or eliminate the established, customary employment of their own longshore employees who have been and are employed on a steady basis. The continued employment on a steady basis of such employees is es-

sential to the efficient operation of terminal facilities by the Pacific Northwest ports.

6. Require non-PMA members, notwithstanding the unequal status and absence of participatory rights, to pay amounts equal to full PMA dues and assessments as a condition to the continued employment of labor in the Northwest longshore industry.

7. Require indefinite duration with respect to all the foregoing.

8. Require continuing submission with respect to the foregoing, or such other conditions as might later be imposed by PMA, as a condition to the continued employment of labor in the longshore industry.

The revised version of the Supplemental Memorandum of Understanding No. 4 and the practices proposed by the PMA and the ILWU pursuant thereto would be as unlawful and detrimental to the commerce of the United States and the general public interest, unfair, unjust, discriminatory and unduly prejudicial to the petitioners and the individuals and business concerns which are interested in and dependent upon such ports, as the original Supplemental Memorandum No. 4. For the same reasons and upon the same grounds as set forth above and in the original Petition, such revised Supplemental Memorandum would constitute violations of Sections 15, 16 and 17 of the Shipping Act of 1916.

WHEREFORE, petitioners pray that the Federal Maritime Commission continue its investigation in the light of the revised version of the Supplemental Memorandum of Understanding No. 4 and that the relief prayed for in the original Petition be granted.

DATED this 18th day of October, 1973

Respectfully submitted,

DAVIES, BIGGS, STRAYER, STOEL AND BOLEY

By /s/ Harry R. Bullard
Of Attorneys for Petitioners

WHITE, SUTHERLAND, PARKS & HEATH

By /s/ Alex F. Parks
Of Attorneys for Petitioners

FEDERAL MARITIME COMMISSION

[Served January 30, 1974]

[Caption Omitted]

SECOND SUPPLEMENTAL ORDER
CONSOLIDATING JURISDICTIONAL ISSUES

This proceeding was instituted by Order of Investigation served September 6, 1972, to determine whether a master collective bargaining contract and a Supplemental Memorandum of Understanding No. 4, entered into by the Pacific Maritime Association (PMA) and the International Longshoremen's and Warehousemen's Union (ILWU), embody any agreements between and among the members of PMA, which agreements are subject to the requirements of section 15 of the Shipping Act, 1916 (the Act); whether the implementation of these contracts by PMA and the ILWU will result in any practices which are violative of sections 16 and 17 of the Act; and finally whether there are any labor policy considerations which would operate to exempt such agreements or practices from any provision of the aforementioned sections of the Shipping Act, 1916.

The Commission's investigation was initiated at the request of several northwest ports,* who maintain that the subject agreement, providing for the employment of longshore labor, are "agreements" within the meaning of section 15 of the Act, which should have been filed for Commission approval pursuant to that section.

On October 19, 1972, in response to a petition filed by Hearing Counsel, we issued our First Supplemental Order Severing Jurisdictional Issues. In that order we agreed

* The Ports of Anacortes, Bellingham, Everett, Grays Harbor, Olympia, Port Angeles, Portland and Tacoma.

to decide separately the issue of the Commission's jurisdiction under section 15 over the subject agreements. Additionally, we agreed to consider whether any labor policy considerations would operate to exempt these agreements or the practices resulting from them from the provisions of section 15, 16 and 17 of the Act.

Petitioner ports have now submitted a revised version of the Supplemental Memorandum of Understanding No. 4 entitled "ILWU-PMA Non-member Participation Agreement" which, during the pendency of this proceeding, was made part of the master collective bargaining contract.

Upon a comparative reading of the "ILWU-PMA Non-member Participation Agreement", we find that this revised version is the same in all its substantive essentials as the Supplemental Memorandum of Understanding No. 4, the only difference between the two being that this revised agreement is embodied in the master collective bargaining agreement between PMA and ILWU. The Commission proposes to (1) grant the supplemental petition; and (2) include the "ILWU-PMA Nonmember Participation Agreement" in the current deliberations rising out of the First Supplemental Order.

However, the Commission desires that all interested parties be afforded the opportunity to show cause why the Commission should not proceed with its jurisdictional determinations.

THEREFORE, IT IS ORDERED, That the first ordering paragraph of the Commission's First Supplemental Order, served October 19, 1972 [and which amended the first opening paragraph of the Commission's Order of September 6, 1972], be amended as follows:

> 1. Whether the master collective bargaining contract entered into by PMA and ILWU embodies any agreements between and among the members of PMA, which agreements are subject to the requirements of section 15 of the Shipping Act, 1916 (46 U.S.C. 814), and should be filed for approval under that section, or whether such agreements otherwise exist; and whether the master collective bargaining con-

tract is itself an agreement subject to the requirements of section 15 and should be filed for approval;

• • • •

4. Whether any labor policy considerations would operate to exempt the master collective bargaining agreement contract and/or any agreements embodied therein from any provisions of section 15 of the Act.

• • • •

IT IS FURTHER ORDERED, That pursuant to section 22 of the Shipping Act, 1916 (46 U.S.C. 821), the first and fourth issues set forth in the first ordering paragraph of the amended First Supplemental Order of October 19, 1972, relating to application of section 15 to the subject agreement and operation of labor policy exemptions, be severed from the proceeding for expeditious determination by the Commission; and

IT IS FURTHER ORDERED, That there appearing to be no material issues of fact in dispute with regard to the purely jurisdictional issues arising under section 15, this phase of the proceeding shall be limited to the submission of affidavits and memoranda of law, replies, and oral argument. Should any party feel that an evidentiary hearing be required, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to this issue in this phase of the proceeding, and why such proof cannot be submitted through affidavit.

Requests for hearing shall be filed on or before February 22, 1974. Simultaneous affidavits of fact and memoranda of law shall be filed by all parties no later than the close of business February 22, 1974. Reply affidavits and memoranda shall be filed by all parties no later than the close of business March 4, 1974. An original and 15 copies of affidavits of fact, memoranda, and replies are required to be filed with the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Copies of any papers filed with the Secretary should also be served upon all parties hereto. Time and date of oral argument, if requested and/or deemed necessary by the Commission, will be announced at a later date; and

IT IS FURTHER ORDERED, That notice of this order by published in the *Federal Register* and that a copy thereof and notice of hearing be served upon Petitioners and both the Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union, individually, and on behalf of their respective members; and

IT IS FURTHER ORDERED, That notice of this order and notice of hearing be mailed directly to the Department of Justice, the Department of Labor and the National Labor Relations Board; and

IT IS FURTHER ORDERED, That all future notices issued by or on behalf of the Commission with regard to this phase of the proceeding shall be mailed to Petitioners, the Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union, individually, and on behalf of their members, and any other person made a party hereof; and

IT IS FURTHER ORDERED, That any person other than those who are parties to Docket No. 72-48 who desires to become a party to this proceeding and participate herein, shall file a petition to intervene in accordance with Rule 5(1), 46 CFR 502.72, of the Commission's Rules of Practice and Procedure; and

IT IS FURTHER ORDERED, That the proceedings before the Presiding Administrative Law Judge be stayed pending determination of the severed issue by the Commission.

By the Commission.

/s/ Francis C. Hurney
FRANCIS C. HURNEY
Secretary

(Seal)

BEFORE THE FEDERAL MARITIME COMMISSION

[Received Feb. 11, 1974]

PETITION OF WOLFSBURGER

[Caption Omitted]

TRANSPORT-GESELLSCHAFT m.b.H.
FOR LEAVE TO INTERVENE

Petitioner, Wolfsburger Transport-Gesselschaft m.b.H. ("Wobtrans"), respectfuly represents that it has a substantial interest in the matters in controversy in the above entitled proceeding and, pursuant to Rule 5(1) of the Federal Maritime Commission's Rules of Practice and Procedure (46 C.F.R. 502.72), petitions to intervene in, and become a party to, said proceeding. Set forth below are the grounds for the proposed intervention:

1. Wobtrans is a corporation organized and existing under the laws of the Federal Republic of Germany, with its principal place of business in Wolfsburg, Germany. It is engaged in the business of transporting vehicles to the Pacific Coast ports of the United States.

2. The vehicles transported by Wobtrans are discharged on the Pacific Coast by members of the International Longshoremen's and Warehousemen's Union ("ILWU").

3. The master collective bargaining contract and Supplemental Memorandum of Understanding No. 4 ("the Agreements") entered into by the Pacific Maritime Association ("PMA") and the ILWU affect Wobtrans' operation.

4. Wobtrans is one of the parties in Docket 73-34, Agreement No. T-2635-2, Final Pay Guarantee Plan, regarding the method by which moneys needed to discharge certain obligations under the PMA-ILWU collective bargaining agreements shall be raised. The issues presented in Docket 72-48, including the jurisdiction of the Commission over the Agreements, are simply other aspects of

the PMA-ILWU collective bargaining agreements affecting Wobtrans' discharge of vehicles.

5. Wobtrans' grounds for intervention are pertinent to the issues already presented and do not unduly broaden them. Intervention by Wobtrans will not unduly delay this proceeding.

WHEREFORE, petitioner requests that its petition to intervene be granted and that petitioner be treated as a party hereto, with the right to have notice of and appear at the taking of testimony, to produce and cross-examine witnesses, and to be heard in person or by counsel upon brief and at oral argument, if oral argument is granted.

Respectfully submitted,

WOLFSBURGER TRANSPORT
GESELLSCHAFT m.b.H.

HERZFELD & RUBIN, P.C.
Attorneys
40 Wall Street
New York, New York 10005

By /s/ Cecelia Goetz
CECELIA GOETZ

By /s/ Alan A. D'Ambrosio
ALAN A. D'AMBROSIO

Dated at New York, New York
February 7, 1974

FEDERAL MARITIME COMMISSION
WASHINGTON, D. C.

[Served February 25, 1974]

[Caption Omitted]

INTERVENTION GRANTED

Wolfsburger Transport-Gesellschaft m.b.H. (Wobtrans) has petitioned to intervene in this proceeding alleging an interest in the issues therein including the question of jurisdiction of the Commission over the agreements. Pacific Maritime Association objects to the petition.

Wobtrans appears to have a legitimate interest in this proceeding which should entitle it to participate therein. We are not unmindful of the lateness of the Wobtrans petition, but do not think their late participation will unduly delay the proceeding.

Accordingly, the petition to intervene is hereby granted.

By the Commission.

/s/ Francis C. Hurney
FRANCIS C. HURNEY
Secretary

BEFORE THE
FEDERAL MARITIME COMMISSION

[Received Mar. 11, 1974]

[Caption Omitted]

AFFIDAVIT OF EDMUND J. FLYNN

STATE OF CALIFORNIA)
) ss.
CITY AND COUNTY OF SAN FRANCISCO)

EDMUND J. FLYNN, being first sworn, deposes and says:

I am the President of Pacific Maritime Association (PMA), a maritime employers' collective bargaining association of steamship operators, terminals, stevedores and miscellaneous maritime companies, covering the entire United States Pacific Coast, except Alaska. As of March 14, 1973, one hundred twenty-six companies were members of PMA. On December 14, 1972, I submitted an affidavit in this proceeding. This affidavit is submitted in response to the Second Supplemental Order Consolidating Jurisdictional Issues, served by the Federal Maritime Commission on January 30, 1974, which refers to the nonmember participation agreement, Section IX of the Memorandum of Understanding between PMA and the International Longshoremen's and Warehousemen's Union (ILWU), dated June 24, 1973.

The Commission's order states that the nonmember participation agreement:

> . . . is the same in all its substantive essentials as the Supplemental Memorandum of Understanding No. 4, the only difference between the two being that this revised agreement is embodied in the master collective bargaining agreement between PMA and ILWU.

This statement of the Commission is factually incorrect. Not only are there substantial differences between the present and the former agreement which make the present agreement less objectionable to the petitioner ports, but both agreements were embodied in the master collective bargaining agreement between PMA and the ILWU.

The collective bargaining history which resulted in Supplemental Memorandum of Understanding No. 4 was discussed in my previous affidavit and the affidavits of Mr. B. H. Goodenough, Vice President, Shoreside Labor Relations, PMA, submitted on December 14, 1972, and January 10, 1973, in this proceeding, and for this reason I do not believe it necessary to repeat the details of the negotiations between PMA and the ILWU which led to the final agreement. I wish to note, however, that at the conclusion of the 91 meetings prior to the signing of the Memorandum of Understanding on February 10, 1972, a copy of which is attached as Exhibit A, the nonmember participation question had not been resolved. This item, along with other items to which no specific cents/hour costs could be attached, was the subject of further negotiations between PMA and the ILWU, and ultimately resulted in Supplement No. 4, agreed to by PMA and the ILWU on April 25, 1972.

The collective bargaining negotiations conducted in 1973 resulted in the signing, on June 9, 1973, of a Memorandum of Understanding between PMA and the ILWU, a copy of which is attached as Exhibit B. As in the case of the 1972 negotiations, several items, including the nonmember participation issue, were unresolved upon the signing of the Memorandum of Understanding on June 9, 1973. Subsequently, the unresolved items were negotiated between PMA and the ILWU, and agreement was reached on all such items. These unresolved items were incorporated into a Memorandum of Understanding, dated June 24, 1973, which also included the items previously agreed upon by PMA and the ILWU on June 9, 1973. A copy of the Memorandum of Understanding of June 24, 1973 is attached as Exhibit C.

There is no factual basis for the statement of the Commission that the present nonmember participation agreement is embodied in the master collective bargaining agreement, whereas Supplement No. 4 was not. Supplemental Memorandum of Understanding No. 4 is a supplement to—and a part of—the PMA-ILWU Memorandum of Understanding of February 10, 1972. This is obvious from its title, "Supplemental Memorandum", which speaks of itself. Supplemental Memorandum No. 4 is no less a part of the PMA-ILWU collective bargaining agreement than is the present nonmember participation agreement. Both agreements were the subject of collective bargaining between PMA and the ILWU, both were agreed upon during th bargaining at the end of the contract term, and both were executed by PMA and the ILWU. The sole difference in form (as distinct from substantive changes in provisions) is a typing job—on June 24, 1973, a single document was typed, which included all items, whereas on February 10 and April 25, 1972, two documents were typed.

I would also point out that the nonmember participation item was specifically referred to in the Memorandum of Understanding of February 10, 1972, as an item to be resolved between PMA and the ILWU by negotiation or mediation or, failing agreement by such means, by submission to the Coast Arbitrator for a final and binding decision (Exhibit A, pp. 37-38).

This difference in form should certainly not control whether or not Supplemental Memorandum No. 4 was included in the PMA-ILWU collective bargaining agreement. For example, the Memorandum of Understanding of February 10, 1972 re-executed and amended the 1966-1971 Pacific Coast Longshore and Clerks Agreement (PCLCA) and the CFS Supplement (CFSS) (Exhibit A, pp. 1 and 21, *et seq.*) by reference thereto, but it did not *physically* embody those two agreements therein. It is as incorrect to state that Supplemental Memorandum No. 4 was not embodied within the PMA-ILWU collective bargaining agreement as it is to say that the PCLCA and the CFSS were not embodied therein. Such was never intended by PMA or the ILWU, and substance should not give way to mere form.

The Commission's assertion in its Second Supplemental Order, that the present nonmember participation agreement "is the same in all its substantive essentials as the Supplemental Memorandum of Understanding No. 4," is also incorrect. There are many significant differences between the two agreements. While neither PMA nor the ILWU believed Supplemental Memorandum of Understanding No. 4 was unlawful, a real effort was made during the negotiation of the present nonmember participation agreement to satisfy the objections raised by the nonmember ports as to the former agreement. As a result of this desire to resolve the basic objections of the nonmember ports, many substantive changes were made, all of which are evident from a comparison of the two agreements.

It is for this reason that PMA made no objection to the inclusion of the 1973 agreement in this proceeding. Supplemental Memorandum of Understanding No. 4 was never implemented by PMA and the ILWU, and has now been replaced by the 1973 agreement which answers many of the objections of the petitioner ports. In fact, these differences have apparently satisfied fully, Seattle's objections to the nonmember participation agreement.

For example—and very important—the note following paragraph 3b of the former agreement stated that if a nonmember participant had an agreement with the ILWU providing for the utilization of the jointly registered work force at more favorable terms and conditions of employment than those provided under the PCLCA, such nonmember was required to amend its agreement with the Union to conform to the PCLCA in order to become a nonmember participant. A principal contention of the petitioner ports as to the 1972 agreement was that Supplemental Memorandum of Understanding No. 4 represented an agreement or understanding between PMA and the ILWU that the Union, in its negotiation with nonmembers, must exact the same terms from nonmembers as it had obtained from PMA. There is no such agreement, as shown by my affidavit of December 14, 1972. The deletion of the note following paragraph 3b simply confirms that the ILWU is free to bargain with nonmembers on any basis it and the nonmembers may choose.

Another important change was the deletion of the last sentence of paragraph 6 of Supplemental Memorandum of Understanding No. 4, which provided that nonmember participants shall be liable to meet any obligations of PMA as to any collective bargaining and contracting relationship, including obligations accepted by PMA as imposed by law. The petitioner ports had contended that they would not undertake such obligations, and under the present agreement they are not required to do so. In fact, this change goes further than the ports had asked, because they were willing to assume such obligations to the extent that public bodies were able to do so.

In addition, paragraph 9 of Supplemental Memorandum of Understanding No. 4 was deleted. Paragraph 9 provided that should there be a cessation of work at the end of the contract period of the PCLCA and related agreements, the PMA labor policy shall continue to apply to nonmmeber participants, and nonmember participants shall continue to accept PMA's labor policy as their own. The deletion of this provision was made as the result of the petitioner ports' contention that they should not be required to adhere to PMA labor policies after the expiration of the ILWU-PMA collective bargaining agreement.

Furthermore, the rights of nonmembers in terminating the agreement have been changed. Former paragraph 13 stated that the agreement shall continue without a termination date unless jointly terminated by PMA and the ILWU. Present paragraph 12 now makes it clear that a nonmember participant may terminate the agreement on terms agreed upon by PMA, the ILWU and the nonmember. Such terms would only make it clear that the nonmember would no longer continue to receive the benefits and privileges which accrued to it while the nonmember was a signatory to the agreement.

As stated above, these significant changes have apparently satisfied Seattle's objections to the nonmember participation agreement. I discussed the changes with representatives of the Port of Seattle and they indicated an intention to dismiss the court action they have filed and

to take no further action in this FMC proceeding. It should be noted that Seattle has not joined in the supplemental petition of the petitioner ports.

I wish also to respond to the assertions made by the petitioner ports in their Supplemental Petition, dated October 18, 1973.

The petitioners' statement in paragraph III that the present nonmember participation agreement "is implemented, by negative inference" is not correct. There has been no implementation of the nonmember participation agreement, directly, inferentially, or otherwise. As was the case of Supplemental Memorandum of Understanding No. 4, PMA and the ILWU have taken no steps to implement the nonmember participation agreement, pending the resolution of this proceeding before the Commission. The present nonmember participation agreement is simply the result of collective bargaining between PMA and the ILWU, but it has not been presented to nonmembers for their signature, nor has any action been taken by PMA or the ILWU to implement the agreement.

As to the numbered points made by the ports in paragraph III of their Supplemental Petition, I have the following comments:

Item 1. The ports allege that the nonmember participation agreement requires the adherence of non-PMA members to all the terms of agreements to which they are not privy or parties as a condition to the availability of labor in the Northwest longshore industry. This contention is not factually correct. For example, the grain elevators in the Pacific Northwest have separate agreements with the ILWU, with wage classifications, wage rates and paid holidays different from those of the PMA-ILWU agreements. Furthermore, the ports' allegation that there is no alternative source of manpower to the ILWU-PMA jointly registered work force is not correct. Daily, at various ports, even PMA members use so-called casual workers who are not members of the jointly registered work force. Furthermore, from time to time the ports in Oregon obtain workers from the Oregon Unemployment Agency. The petitioner ports should be required to furnish affirmative evidence that they have

tried to hire alternative workers and have been unable to do so.

If non-PMA members choose to do so they may become nonmember participants. However, nonmembers should not be able to take advantage of the benefits which PMA members obtain from the ILWU-PMA jointly registered work force, while rejecting the obligations which go with the benefits. The ILWU-PMA joint work force was established over 40 years ago and is an integral part of a jointly supported dispatch hall, a highly sophisticated central payroll and record keeping system, and a comprehensive program of fringe benefits negotiated by PMA and the ILWU, including a pension plan, a welfare plan, vacation allowance program, a Mechanization and Modernization Agreement, and, more recently, pay guarantee and paid holiday plans. These programs are vitally important to the work force, and their continued existence should not be endangered by permitting nonmembers of PMA to select which conditions they wish to abide by, and which they will ignore.

It is no answer for the nonmember ports to assert that they are willing to contribute "their share" of the ILWU-PMA fringe benefits, because the inclusion in the joint work force of employees of nonmembers carries with it significant responsibilities for PMA which are not shared by nonmembers. The joint work force employees of a nonmember participant are entitled to all the benefits of the ILWU-PMA fringe benefit programs. If a nonmember leaves the industry its longshore employees must still be provided for, and it is the continuing obligation of PMA to do so. The jointly registered work force consists of a pool of workers registered, trained and benefited by PMA members, and PMA members continue to have obligations to this work force, regardless of the entry into and exit from the industry of nonmembers. For this reason a nonmember's "fair share" cannot be measured simply by whether it is willing to pay the latest welfare assessment paid by PMA members. A nonmember's fair share is measured by all of the obligations included in the nonmember participation agreement, not just a monetary contribution.

Item 2. The ports contend that the nonmember participation agreement requires adherence to the agreements between PMA and the ILWU in the selection of men for inclusion in the work force, thereby perpetuating monopoly control over the work force. Since it is a PMA-ILWU work force, PMA and ILWU should select the men, and if others *choose* to use the work force they should not be able to demand non-adherence to the agreements that govern the selection of the work force. If nonmembers do not agree with the manner in which the PMA-ILWU work force is selected, they have the right to negotiate their own separate work force with other unions, including the ILWU. If, however, nonmembers do not negotiate separate agreements with the ILWU and, instead, elect to utilize the joint work force of PMA and the ILWU, the nonmembers should not dictate the terms under which PMA and the ILWU select men for inclusion in the joint work force.

Item 3. The petitioner ports object to any adherence to "work stoppages as dictated by PMA." I wish first to note that PMA does not dictate work stoppages. Such incidents occur as a result of the failure of the parties to reach agreement on major items subject to negotiations. By law the Union has a right to strike and the employers have a counter-balancing right to lockout. I repeat that if nonmembers wish to bargain separately with any union for an agreement which treats labor disturbances in a different manner, nothing in the ILWU-PMA agreements prevents them from doing so.

If, however, nonmembers wish to utilize the jointly registered work force they should not be entitled to a favored position during labor interruptions. Indeed, the ports' position encourages, supports and condones partial strikes by the ILWU, a most ~~divestive~~ divisive tactic. It is well established that in such partial strike situations, a multiple-employer group can retaliate by a complete lockout. The ports' position would not permit PMA to use the full effectiveness of this recognized protective action because the ports are demanding that they be permitted to operate while PMA members are shut down. Thus, the petitioners want all of the benefits of the ILWU-

PMA programs, but they also ask for freedom from the burdens imposed upon PMA members during periods of labor disturbance. In such times, petitioners want the competitive advantage of operating when all their competitors cannot.

Item 4. The petitioners assert that the nonmember participation agreement requires continued liability for PMA assessments, dues and other obligations, notwithstanding denial "for unspecified reasons" of any right of the petitioner ports to obtain workers through the dispatch procedures. This assertion is incorrect. First, the assertion that there is "continued liability" implies that there is no time limit as to such liability. However, paragraph 4 of the nonmember participation agreement states that any liability of a nonmember participant, where it ceases to have the right to obtain men through the joint work force, shall continue only during the period of its participation in the use of the joint work force. It is only fair that nonmembers should not escape liabilities incurred by them *during their use of the joint work force*, merely because they no longer use the work force. Second, denial of the joint work force cannot be for "unspecified reasons." Paragraphs 7, 8, 9 and 10 of the agreement set forth in detail specific obligations, the noncompliance with which will render a nonmember delinquent.

Item 5. The petitioners allege that the agreement requires them "through negative inference" to curtail or eliminate steady employees. There is no inference, negative or otherwise, in the nonmember participation agreement to curtail or eliminate the employment of steady men. Paragraph 9.43 of the PCLCA states:

> In addition to other steady employees provided for elsewhere in this Agreement, the Employers shall be entitled to employ steady, skilled mechanical or powered equipment operators without limit as to numbers or length of time in steady employment. They shall be entitled to the Contract guarantees as provided in Section 3. The employer shall be entitled to shift such steady men to all equipment for

which, in the opinion of the employer, they are qualified.

PMA members employ steady men, and so do the petitioner ports. The petitioner ports would continue to do so on the same basis as PMA members.

Item 6. The petitioner ports object to the payment, "notwithstanding the unequal status and absence of participatory rights," of an amount equal to the dues and assessments paid by a PMA member. Any unequal status and absence of participatory rights is the petitioners' own choosing. They are free to become PMA members and participate with other members. However, if instead they choose to obtain all of the benefits of the jointly negotiated collective bargaining agreement but at the same time remain nonmembers, they should pay an amount equivalent to the dues and assessments of PMA members.

Item 7. The petitioner ports assert, incorrectly, that the nonmember participation agreement requires "indefinite duration" with respect to its obligations. The agreement has no such indefinite duration. As I stated above, under paragraph 12 a nonmember is free to terminate its participation at any time, on terms and conditions agreed by the nonmember, PMA and the ILWU. Such terms and conditions would only make it clear that the nonmember would no longer continue to receive the benefits and privileges which accrued to it while the nonmember was a signatory to the agreement.

Item 8. The final contention of the petitioner ports is that the agreement requires submission to its terms, or such other conditions as might later be imposed by PMA, as a condition to the continued employment of labor. There is no provision in the nonmember participation agreement requiring continuing submission by nonmembers, nor is signing the agreement a condition to the continued employment of labor. The petitioner ports need not sign the agreement or continue their participation therein. I reiterate that they are free to employ workers through any alternative means they prefer, and to bargain with any union, including the ILWU, which may represent those workers. However, if they elect to

use the ILWU-PMA joint work force, they should do so on the same basis as PMA members. When a new collective bargaining agreement is negotiated, members are subject to any new terms negotiated. The same should be true of nonmembers as long as they remain participants in the various programs jointly instituted by PMA and the ILWU.

/s/ Edmund J. Flynn
EDMUND J. FLYNN

Subscribed and sworn to before me this 1st day of March, 1974.

/s/ Joan Fowler
Notary Public

BEFORE THE FEDERAL MARITIME COMMISSION

[Received Mar 18, 1974]

[Caption Omitted]

RESPONSE OF HEARING COUNSEL TO SECOND SUPPLEMENTAL ORDER CONSOLIDATING JURISDICTIONAL ISSUES

Petitioner ports have submitted a revised version of Supplemental Memorandum of Understanding No. 4 entitled "ILWU-PMA Non-Member Participation Agreement" which has been made part of the collective bargaining contract. In its Second Supplemental Order Consolidating Jurisdictional Issues, dated January 30, 1974, the Commission found

> "[u]pon a comparative reading of the ILWU-PMA Non-Member Participation Agreement, . . . that this revised version is the same in all its substantive essentials as the Supplemental Memorandum of Understanding No. 4. The only difference between the two being that this revised agreement is embodied in the master collective bargaining agreement between PMA and ILWU."

PMA, however, in its Memorandum of March 1, 1974, filed in response to the Commission's Second Supplemental Order, argues that there are substantial differences between the original and revised non-member agreements. It appears to Hearing Counsel that the arguments of PMA go more to the merits of possible antitrust violations than the facts affecting the Commission's jurisdiction.

In response to the Commission's First Supplemental Order Severing Jurisdictional Issues, dated October 19, 1972, Hearing Counsel argued that the Arguments before the Commission essentially involved antitrust and labor-related problems which should be resolved in the Courts and before the NLRB. Having reviewed the revised ILWU-PMA Non-Member Participation Agreement, and

the Memoranda of the various parties, we find nothing which would change the position of Hearing Counsel as set forth previously, and we therefore incorporate by reference our Memoranda of Law dated December 15, 1972 and January 12, 1973.

Respectfully submitted,

Donald J. Brunner, Director
Bureau of Hearing Counsel

Paul J. Kaller
Hearing Counsel

BEFORE THE FEDERAL MARITIME COMMISSION

[Received Apr. 2, 1974]

[Caption Omitted]

AFFIDAVIT OF EDMUND J. FLYNN

CITY AND COUNTY OF SAN FRANCISCO)
)
STATE OF CALIFORNIA) ss.

EDMUND J, FLYNN, being first sworn, deposes and says:

I am the President of Pacific Maritime Association (PMA), a maritime employers' collective bargaining association of steamship operators, terminals, stevedores and miscellaneous companies, covering the entire United States Pacific Coast, except Alaska. As president of PMA I submitted an affidavit dated March 1, 1974 in this proceeding. In that affidavit, among other matters, I stated that it was my belief that the 1973 revisions of the ILWU/PMA Nonmember Participation Agreement had satisfied Seattle's objections and that the Port of Seattle's representatives had indicated an intention to dismiss the court action involving that agreement and to take no further action in this FMC proceeding. My statement in this regard is based only upon discussion with representatives of the Port of Seattle but upon correspondence to which I now refer and attach copies.

Appendix A is a letter addressed to me from PMA's Seattle counsel in the antitrust suit. That letter dated September 20, 1973 states that the Port's attorney had indicated that the problems between the Port of Seattle, PMA, and ILWU may have been resolved by the terms of the new agreement. It asked for a copy of the new agreement so that it could be supplied to the Port's attorney.

Appendix B is a letter dated December 21, 1973 addressed to Mr. Goodenough, Vice-President of PMA, from Mr. Opheim, General Manager of the Port of Seattle, which encloses a copy of a letter of December 20, 1973 from Mr. Ford, Deputy General Manager of the Port of Seattle, to Mr. Crutcher, the Port's attorney. This letter is captioned:

"Re: Port of Seattle vs. PMA, ILWU, et al."

The letter expresses Seattle's wish to dispose of the captioned matter, suggests that a dismissal would be an appropriate way to handle it, and requests counsel to proceed accordingly.

I assumed that the caption included Seattle's participation in Docket 72-48 as well as the court suit and I was accordingly surprised when Seattle's attorney filed a further response in Docket 72-48 under date of March 12, 1974.

/s/ Edmund J. Flynn
EDMUND J. FLYNN

Subscribed and sworn to before me this — day of March 1974.

/s/ Joyce M. Whitman

Notary Public

APPENDIX A

LAW OFFICES
RIDDELL, WILLIAMS, VOORHEES, IVIE & BULLITT

Seattle-First National Bank Building
Seattle 98154

September 20, 1973

[Sep. 24, 1973—E.I.F.]

Mr. Edmund J. Flynn, President
Pacific Maritime Association
635 Sacramento Street
San Francisco, California 94120

Re: Port of Seattle v. PMA and ILWU

Dear Ed:

One of the attorneys for the Port of Seattle contacted me the other day and stated that the problems between the Port and PMA and ILWU may all have been resolved by the terms of the new collective bargaining agreement between PMA and ILWU. He said that if this were so, the Port would probably be willing to dismiss its anti-trust lawsuit.

If you could send to me a copy of the new agreement, I would submit it to the attorneys for the Port to see if the new provisions might not wash out the Port of Seattle litigation.

Sincerely yours,

/s/ Donald Voorhees
DONALD VOORHEES

DV/cb

APPENDIX B

PORT OF SEATTLE
P.O. Box 1209
Seattle, Washington 98111

[Received Dec. 24, 1973]

December 21, 1973

Mr. Ben H. Goodenough, Vice President
Pacific Maritime Association
P.O. Box 7861
San Francisco, California 94120

Dear Ben:

I believe you and Ed Flynn will be interested in the dismissal of the Port of Seattle suit, pursuant to the copy of a letter dated December 20, 1973 addressed to the legal firm retained by the Port of Seattle for this purpose.

Sincerely,

/s/ J. Eldon Opheim
J. ELDON OPHEIM
General Manager

pa

Encl. (1)

APPENDIX C

PORT OF SEATTLE
P.O. Box 1209
Seattle, Washington 98111

[Received Dec. 24, 1973]

December 20, 1973

Mr. Michael B. Crutcher
Preston, Thorgrimson, Ellis, Holman & Fletcher
2000 IBM Building
Seattle, WA 98101

RE: Port of Seattle vs. PMA, ILWU, et al.

Dear Mike:

This will respond to your letter of December 11th concerning the Port's desire in the disposition of the above-captioned matter.

After substantial discussion here, it is our wish to have the case dismissed. We think that our relationships with the unions and with PMA requires us to finally dispose of this matter and a dismissal would be the appropriate way to handle it.

We ask that you proceed to accomplish this.

Very truly yours,

Richard D. Ford
Deputy General Manager

rdf

cc: J. Eldon Opheim
James D. Dwyer

9/05

BEFORE THE FEDERAL MARITIME COMMISSION

[Received Apr. 3, 1973]

[Caption Omitted]

AFFIDAVIT OF MILTON A. MOWAT

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

I, MILTON A. MOWAT, being first duly sworn upon oath depose and say: I am the Manager, Regulatory Affairs, of The Port of Portland, one of the petitioner ports. I make this affidavit on behalf of all of the petitioner ports in the interest of expediting this proceeding and for the convenience of all parties concerned.

Mr. Edmund J. Flynn, President of the Pacific Maritime Association, states on page 8 of his affidavit dated March 1, 1974:

> "• • • Furthermore, the ports' allegation that there is no alternative source of manpower to the ILWU-PMA jointly registered work force is not correct. Daily, at various ports, even PMA members use so-called casual workers who are not members of the jointly registered work force. Furthermore, from time to time the ports in Oregon obtain workers from the Oregon Unemployment Agency. The petitioner ports should be required to furnish affirmative evidence that they have tried to fire alternative workers and have been unable to do so."

The Port of Portland does not, and has not in at least the past 20 years that we can speak of from first-hand experience hired any dockworkers from any source other than the ILWU hiring hall. Should the ILWU hiring

hall exhaust the supply of registered longshoremen and still not fulfill the need for dockworkers on a given day, they will obtain and dispatch so-called casual men, men who are recruited and represented by ILWU but who are not registered longshoremen. It must be pointed out that any such casual men that are hired by the Port of Portland are hired exclusively through the ILWU hiring hall. We pay casual dockworkers the same wages and fringe benefits as registered dockworkers. We do not, nor could we, as Mr. Flynn incorrectly states, "obtain workers from the Oregon Unemployment Agency" or any other source whatsoever.

On March 13 and 14, 1974, I personally contacted responsible management personnel of the other petitioner ports, namely, Anacortes, Bellingham, Everett, Grays Harbor, Olympia, Port Angeles, and Tacoma, and they state that all dockworkers they hire come from their respective ILWU hiring halls and not from any other source. The foregoing statements apply equally to these ports.

The ILWU takes their jurisdiction of performing all dock work very seriously. They have repeatedly pressed this point with the Port of Portland and other petitioner ports to the end that if any cargo operation on the docks was performed by non-ILWU personnel, the goods would be considered "hot cargo" and ILWU personnel would refuse to handle that cargo. Illustrative is the fact that in 1968, the Port of Portland completed its new 35-acre automobile unloading and handling facility to handle the flow of imported motor vehicles previously handled at other Port of Portland facilities. Port Services, a private firm that performed auto cleanup and dealer preparation of imported vehicles at an off-dock location with other than ILWU workers, built the necessary facilities to perform these same services at a location adjacent to and separated by a road and fence from the vehicle storage area at the new auto facility but still on Port of Portland property. The ILWU claimed this work on the basis that it was then being performed on Port property even though they had not performed this work previously. When the work was not awarded to the

ILWU by this other employer, ILWU called a strike which shut down the entire Port for approximately 26 days. The strike was resolved only when the other employer abandoned its new auto facility location and moved to an off-dock location.

Although the petitioner ports hypothetically may have "the right to negotiate their own separate work force with other unions," as stated by Mr. Flynn on page 9 of his affidavit, the petitioner ports agree that a work stoppage by ILWU personnel would certainly result should a port have any dock work performed by other than ILWU labor.

/s/ Milton A. Mowat
MILTON A. MOWAT

Subscribed and sworn to before me this — day of March, 1974.

/s/ [Illegible]
Notary Public for Oregon

My commission expires:

FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.

March 4, 1975

[Served March 4, 1975—Federal Maritime Commission]

[Caption Omitted]

PROCEEDING HELD IN ABEYANCE PENDING JUDICIAL REVIEW

By report served January 30, 1975, the Commission concluded that the International Longshoremen's and Warehousemen's Union (ILWU)—Pacific Maritime Association (PMA) Nonmember Participation Agreement is subject to the jurisdiction of the Federal Maritime Commission under Section 15 of the Shipping Act, 1916, 46 U.S.C. 814. The Commission also found that the said agreement is not "labor exempt." By order served January 30, 1975, the Commission ordered that the investigation proceed to determine the remaining specified issues and further ordered that a public hearing be held at a time and place to be determined by the Administrative Law Judge assigned to the proceeding.

By motion, PMA asks that any further investigation and hearing be held in abeyance pending judicial review of the Report and Order. ILWU joins in the motion. It is officially noticed that judicial review has been sought in *Pacific Maritime Association* v. *Federal Maritime Commission*, Docket No. 75-1140, United States Court of Appeals for the District of Columbia Circuit, Petition filed February 18, 1975. In its motion, PMA asserts that the agreement has never been implemented and will not be implemented, unless the Commission's jurisdictional decision is reversed by the Court, or, if not reversed, is approved by the Commission. PMA also points out that it would be inappropriate to proceed because the

particular agreement expires by its own terms on June 30, 1975, an event likely to occur prior to the time that judicial review runs its course.

Hearing Counsel does not oppose the motion. Other parties have not replied to the motion.

Good cause having been shown,[1] the motion is granted. The proceeding will be held in abeyance until judicial review is concluded.

/s/ Seymour Glanzer
SEYMOUR GLANZER
Administrative Law Judge

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[1] This proceeding was commenced before the effective date of the miscellaneous amendments to the Commission's Rules of Practice and Procedure 39 F.R. 33221, September 16, 1974. Nevertheless, the standard of amended Rule 5(a), 46 CFR 502.61,—"Hearing dates may be deferred by the presiding judge only to prevent substantial delay, expense, detriment to the public interest or undue prejudice to a party"—clearly has been met.

EXHIBIT A

MEMORANDUM OF UNDERSTANDING
between
PACIFIC MARITIME ASSOCIATION
and
INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION

Dated: February 10, 1972

INDEX

February 10, 1972

MEMORANDUM OF UNDERSTANDING

Between

PACIFIC MARITIME ASSOCIATION
(For the Employers)

and

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION

(For and on behalf of itself and each of its longshore locals and clerks locals in California, Oregon and Washington)

The 1966-1971 Pacific Coast Longshore and Clerks' Agreement shall be re-executed, as amended in the following particulars:

APPLICABLE TO LONGSHORE AND CLERKS

I. WAGES

Longshore

The basic straight time hourly rate for men paid on a six (6) hour day basis shall be increased by seventy-two cents (72¢) per hour effective 8:00 a.m. on December 25, 1971.

This brings the basic straight time rate to $5.00 per hour and the overtime rate to $7.50 per hour.

Effective 8:00 a.m. on July 1, 1972 the basic straight time hourly rate for men paid on the six(6) hour day basis shall be increased by an additional forty cents (40¢) per hour. This brings the straight time rate to $5.40 per hour and the overtime rate to $8.10 per hour.

For special categories of longshoremen historically paid on an eight (8) hour straight time basis, the straight time hourly rate shall be increased as follows:

Effective 8:00 a.m., December 25, 1971—81¢
Effective 8:00 a.m., July 1, 1972—45¢

Clerks

Effective 8:00 a.m. on December 25, 1971 the straight time hourly rate for clerks will be $5.625 per hour and the overtime rate will be $8.44.

Effective 8:00 a.m. on December 25, 1971 the straight time hourly rate for (clerk) supervisors will be $6.19 and the overtime rate will be $9.285.

Effective 8:00 a.m. on December 25, 1971 the straight time hourly rate for (clerk) chief supervisors and supercargoes will be $6.87 and the overtime rate will be $10.305.

Effective 8:00 a.m. on July 1, 1972 the straight time hourly rate for clerks will be $6.075 and the overtime rate will be $9.11; the straight time hourly rate for (clerk) supervisors will be $6.68 and the overtime rate will be $10.02; the straight time rate for (clerk) chief supervisors and supercargoes will be $7.41 and the overtime rate will be $11.115.

II. PAY GUARANTEE PLAN

Preamble

Guarantee benefits are designed to afford compensation to eligible employees whose earnings have been reduced below minimum levels, as herein defined, because of reduced work opportunities for such employees resulting from changed technology adopted by employers.

Guarantee benefits are not to compensate employees on account of reduced work opportunities caused by any economic decline in the Pacific Coast shipping industry and a resultant reduction in the amount of cargo tonnage handled during any period.

1. This Pay Guarantee Plan will be effective and payable at 36 straight time hours per week for A men and 18 straight time hours per week for B men beginning with the first regular payroll week after the Parties reach agreement on eligibility and other rules required to administer the Plan and in accordance with the conditions hereinafter stated.

2.1 For the first 26 payroll weeks from the date of ratification the Employers shall have a contingent liability of 1/52 of $5,200,000 for each payroll week to pay the weekly guarantee benefits described below.

For the second 26 payroll weeks the Employers shall have a contingent liability of 1/52 of $5,200,000 for each payroll week to pay the weekly guarantee benefits described below.

For the remainder of the Agreement term the Employers shall have a contingent liability of 1/52 of $5,200,000 for each payroll week to pay the weekly guarantee benefits described below.

At the end of the first payroll week if the benefits that have been paid are less than $100,000 the unused portion of the $100,000 will be made available for the next payroll week. Thereafter, the unused portion of the total available in any payroll week shall be made available for the following payroll week. This accumulating procedure shall continue over the full contract period.

Contributions to this account, as determined by the Employers, shall be made by the Employers to meet guarantee payments for each payroll week period, except that the tax described in the CFS Supplement shall be used on a current basis as tax monies become available to offset the cost of the guarantee payments.

Individual hours and earnings will be calculated and averaged during each of the following periods.

(1) For the first 26 payroll weeks from the first regular payroll week after the parties reach agreement on eligibility and other rules required to administer the Plan.

(2) For the next 26 payroll weeks.

(3) For the remainder of the payroll weeks through June 30, 1973.

There shall be no carryover of individual accumulated hours and earnings from one period to the next.

3.1 For each payroll week the Employers shall make payments to registered A and B men as follows:

3.2 *A Men*

The payment, if any, to each individual Class A longshoreman or clerk will be an amount to bring his total earnings for the payroll week to a dollar and cents figure equal to 36 hours at the straight time longshore rate subject to the conditions of Section 3.5.

A Class A man will not be paid under this provision if his paid hours for the payroll week were less than 80% of the average paid hours per man for the A men in his local for that payroll week; and a Class A man will not be paid under this provision if his total paid hours for each of the periods described in paragraph 2.1 are less than 80% of the average total paid hours per man for the A men in in his local for such periods.

Those A men who were paid less than 13 hours in the payroll week will be excluded with their hours from the calculation of such payroll week average in the first two described periods in Section 2.1; those men who were paid less than 11½ hours in the payroll week will be excluded with their hours from the calculation of such payroll week average in the remaining period.

An A man and his hours will be excluded from the calculation of the average for A men of the local for all the payroll weeks since the commencement of the 26 weeks period if, in the first 26 or the second 26 weeks, he was paid less than 13 hours times the number of payroll weeks; if in the remaining payroll weeks he was paid less than 11½ hours times the number of payroll weeks.

For A men, guarantee hours will not be counted as paid hours for the purposes of the three preceding paragraphs.

3.3 *B Men*

The payment, if any, to each individual Class B longshoreman or clerk will be an amount to bring his total earnings for the payroll week to a dollar and cents figure equal to 18 hours at the straight time longshore rate subject to the conditions of Section 3.5.

A Class B man will not be paid under this provision if his paid hours for the payroll week were less than 80% of the average paid hours per man for the B men in his port for that payroll week; and a Class B man will not be paid under this provision if his total paid hours for each of the periods described in paragraph 2.1 are less than 80% of the average total paid hours per man for the B men in his port for such periods.

Those B men who were paid less than 7.25 hours in the payroll week will be excluded with their hours from the calculation of such payroll week average in the first two described periods in Section 2.1; those men who were paid less than 6.25 hours in the payroll week will be excluded with their hours from the calculation of such payroll week average in the remaining period.

A Class B man and his hours will be excluded from the calculation of the average for B men of the port for all the payroll weeks since the commencement of the 26 week period if, in the first 26 weeks or the second 26 weeks, he was paid less than 7.25 hours times the number of payroll weeks; if in the remaining payroll weeks he was paid less than 6.25 hours times the number of payroll weeks.

For B men, guarantee hours will not be counted as paid hours for the purposes of the three preceding paragraphs

Note: The Employers will submit to the Union an alternate plan for B men, integrating the payments under this Pay Guarantee Plan with State Unemployment Compensation Benefits. Such alternate plan shall provide for an income equivalent to 18 hours at the straight time rate as provided in

the first paragraph of Section 3.3. If the parties agree on the alternate plan, it shall replace the B men plan described in Section 3.3.

3.4 A longshoreman's or clerk's earnings shall be the sum of all compensation received during the period, including such payments as straight time, overtime, penalty overtime, skill pay, penalty cargo pay, travel time pay, pay for vacations, and State Unemployment Benefits, and wage guarantee payments.

3.5 Payment for the first payroll week as determined in accordance with 3.2 and 3.3 will be based upon earnings during that payroll week. In the second payroll week, payments will be based on earnings for the first two payroll weeks for each individual.

For example, if during the first payroll week a Class A longshoreman's earnings are the equivalent of 40 straight time hours (4 hours of earnings over the guaranteed amount) he would carry a "credit" into the second payroll week of the earnings for those 4 hours. If his second payroll week earnings were equivalent to 34 straight time hours, the 4 hours' earnings overage from the first payroll week would be added to his 34 hours' earnings and he would not be eligible for any guarantee payments because over the two payroll weeks his earnings would have been two hours more than the guarantee for the two payroll weeks.

If his third payroll week earnings were equivalent to 34 straight time hours the two hours' earnings overage from the first two payroll weeks would be added to his 34 hours' earnings and he would not be eligible for any guarantee payments because, over the three payroll weeks, his earnings would have been equal to the guarantee for the three payroll weeks.

If his fourth payroll week earnings were equivalent to 32 straight time hours he would be eligible for four hours' guarantee payments because, over the four payroll weeks, his earnings would have been four hours less than the guarantee for the fourth payroll week.

This accumulating process will continue until twenty-six payroll weeks have passed.

4.1 The Parties agree to continue the concept that mandatory retirement as spelled out in the Pension Plan may be invoked by joint action of the Parties. To make this concept meaningful, the Parties agree that if either Party believes mandatory retirement should be invoked the initiating Party shall bring the matter to the Joint Coast Labor Relations Committee. If agreement as to invocation and extent thereof cannot be reached, the matter shall be referred to the Coast Arbitrator for resolution and his decision shall be final and binding, provided the Arbitrator shall not change or alter the provisions of the Plan as written.

4.2 A longshoreman or clerk will not be paid under this Plan if he is eligible for normal retirement.

5. With the inception of the Guarantee Pay Plan the Parties agree that it is to their mutual best interest to prevent abuses of the intent and purpose of the Plan. The Parties further agree that it is not practicable to endeavor to define in advance all of the possible abuses that might occur or the actions that should be taken when abuses do occur. Therefore, the Parties agree that the following general principles apply:

(a) The Employers agree that they will not endeavor to develop rules or create situations which will in effect deprive men covered by this Agreement of benefits under this Plan to which they might normally be entitled.

(b) The Union agrees that neither it or any of its locals will act in such a manner as to evade the intent and purpose of Section 2.5 of the 1966-71 PCL & CD and thereby create situations where registered men would receive payments under this Plan to which they otherwise would not be entitled.

(c) The Union agrees that historically travel between ports has been an accepted and essential part

of the Agreement, and that neither the Union or any of its locals will endeavor to create travel or non-travel situations which would result in payments under the Plan to which the registered men would not otherwise be entitled.

(d) If the registered work force of clerks in any local is exhausted on any dispatch, available registered longshoremen shall be offered the work before casual clerks are employed. Failure of a registered longshoreman to accept such dispatch shall make him ineligible for benefits for that payroll week.

(e) Within a period of 10 days following the Union Caucus' approval of the Agreement, the Parties will develop the necessary rules to deal with the situations specifically covered in (a) (b) (c) and (d) above as well as on any administrative matters they believe need resolution for effectuation of the purposes and interests of this Plan. If within 10 days they cannot reach agreement they will submit their respective positions and disputes to the Coast Arbitrator and his decision shall be final and binding.

(f) A work stoppage by any local in violation of Section 11.1 of the PCL & CD shall disqualify all registered men in the port from payment under this Plan in the payroll week that the violation occurs.

6. In the event that unions other than those signatory to this Agreement have work stoppages or there occurs an Act of God (described herein as "force majeure") that creates a reduction in tonnage handled in a port, area, or on a coastwise basis, for a period extending beyond one payroll week, the Employers will present to the Union their evaluation of the tonnage lost. If agreement as to the tonnage loss is reached, the parties will then determine the amount of reduction if any of the Guarantee payments. Such reduction will apply only to the port or ports affected by work stoppage or Act of God. There shall be no reduction in the amount of the Employers' contingent liability arising out of instances covered by this paragraph. If the Parties fail to reach agreement on the reduction of tonnage, or the reduction of

guarantee payments, or both, the issue(s) shall be referred for resolution to the Coast Arbitrator.

7. Disputes arising over the interpretation or application of the terms of the Pay Guarantee Plan shall be referred direct to the Joint Coast Labor Relations Committee and if resolution cannot be reached there the issue(s) shall be presented to the Coast Arbitrator whose decisions will be final and binding.

8. Operational improvements as a result of technological changes may bring about greater than anticipated losses in work opportunity for longshoremen and clerks. Should such losses of work opportunity require Pay Guarantee Plan payments in excess of the contingent liability amounts set forth in Section 2.1, the Union may, at the Joint CLRC level, request the Employers to increase their contingent liability. If disagreement is reached, the Union may submit the dispute to the Coast Arbitrator who shall have the authority to increase the Employers' contingent liability provided

(a) he has first satisfied himself that the parties have conformed with the specific terms and conditions of the Pay Guarantee Plan which they have established to prevent gimicking and abuses and to provide for mandatory retirement to reduce Employer liability.

(b) he is limited to increasing the Employers' contingent liability on a prospective basis and for a period of no more than four (4) weekly payroll periods. On this item it is understood that if at the end of the four weekly payroll periods the normal contingent liability figure would still be inadequate, the Arbitrator has the authority to extend the increased amount for another period of not more than four (4) payroll weeks and continuing four (4) week periods thereafter.

If at the end of any such four (4) payroll week period for which, through arbitration, the Employers' contingent liability figure has been increased it becomes evident that work opportunity has im-

proved so that the $100,000 weekly contingent liability figure is adequate, the Employers shall then be obligated only for the $100,000 weekly contingent liability figure so long as that figure is adequate.

The Arbitrator shall not have the right to increase the Employers' contingent liability because of lost work opportunity due to economic decline.

III. PENSIONS

1. An employee who retired prior to July 1, 1966 with a Basic Monthly Benefit shall receive a Basic Monthly Benefit of $300 effective July 1, 1971. An employee who retired prior to July 1, 1966 with a Reduced Basic Benefit or a Disability Pension will have his benefit increased proportionately.

2. An employee who retired after June 30, 1966 and before July 1, 1971 shall receive a Basic Monthly Benefit of $300 effective with his sixty-first monthly pension payment. An employee who retired between June 30, 1966 and July 1, 1971 with a Reduced Basic Benefit or a Disability Pension will have his benefit increased proportionately effective with his sixty-first pension payment.

3. An employee who retires on or after July 1, 1971 at age 62 or older with 25 years of service out of 35 will receive a Basic Monthly Benefit of $350, and a Supplemental Monthly Benefit of $150, which Supplemental Monthly Benefit shall be payable only until attainment of age 65. Any employee who retires on or after July 1, 1971, at age 65 with less than 25 years of service, shall receive a pro rata benefit based on normal pension of $350. Any employee retiring on or after July 1, 1971 on Disability Pension shall receive benefits proportional to the Basic Monthly Benefit received for normal retirement, or pro rata retirement benefit as appropriate.

4. Employees who have completed 25 years of service out of 35 years may retire at or after age 59 with a benefit until age 65 having an equivalent actuarial value to the Basic Monthly Benefit and the Supplemental

Monthly Benefit otherwise payable at age 62, and at age 65 and thereafter with a benefit having an equivalent actuarial value to the Basic Monthly Benefit.

5. Effective January 1, 1973, employees who attain age 65 and are entitled to retire with either a Basic Monthly Benefit or a Reduced Basic Benefit shall be required to retire. Employees now registered who first became eligible to receive any immediate pension benefit subsequent to age 65 but not later than age 68 shall be required to retire when first eligible for a pension.

6. Longshoremen and clerks with 13 or more years of service and having attained age 55 may leave the industry with the pension benefit to be the full dollar benefit accrued to date with payment deferred until age 65. An employee with 25 or more years of service who elects to leave the industry at or after age 55 with pension payments deferred until age 65, shall only receive a Basic Monthly Benefit of $350, or an immediate pension having an equivalent actuarial value to the amount of pension payable at age 65.

7. The pension benefit improvements set forth in paragraphs 3, 4 and 6 shall become effective with the first regularly scheduled pension payment date occurring 1 month after the date of ratification of the agreement.

IV. WELFARE

1. Present medical coverage under the Welfare Plan shall be maintained during the term of the Agreement with the Employers guaranteeing maintenance of benefits.

2. Hospital and medical benefits in small ports will be brought up to a level as close as possible to the large port plans.

3. Dental coverage under the Welfare Plan shall be as follows:

Dependent children up to the age of 15 shall continue to receive the schedule of dental benefits they now receive. Employees and dependents including children over age 15 and under age 19 entitled to benefits under the Welfare Plan shall receive 73% of the agreed to scheduled dental benefits.

4. Prescription drugs (Kaiser Plan IV or comparable) for welfare eligible retirees, eligible employees and dependents subject to a $1.00 deductible for each prescription.

5. $10,000 life insurance and $10,000 accidental death and dismemberment insurance shall be provided to fully registered active longshoremen and clerks with at least five qualifying years of service who are eligible for welfare coverage on date of death or accident. In the event of the death of a longshoreman or clerk, benefits under this provision shall be payable only to the surviving spouse or dependent children, if any, who are not eligible for any benefits under the Pension Plan. If this insurance benefit is payable, then the Life Insurance and Accidental Death and Dismemberment benefits provided for elsewhere in the Welfare Agreement will not be payable.

6. Retirees welfare coverage will be extended to those retiring under the Pension Agreement at age 59 or later with 25 years of service.

7. Indemnity Plan. Longshoremen and clerks, eligible for Welfare benefits, who are injured in the course of their employment under the Agreement and who as a result of such injury become entitled to Workmen's Compensation will receive an amount equal to the difference between $125 per week and the weekly Workmen's Compensation payment the longshoreman or clerk is entitled to receive.

Note: The Parties agree that this Indemnity Plan will not be implemented until the Parties have jointly developed and agreed to the necessary rules for administration. If the Parties fail to reach agreement on such rules within thirty days from the ratification by both Parties, the disputed issues will be submitted to the Coast Arbitrator and his decision shall be final and binding.

8. The foregoing welfare benefit improvements shall become effective one (1) month after the date of ratification of the Agreement.

9. Revise 7.2 of the Welfare Agreement as follows in order to include hours paid under the Pay Guarantee Plan in meeting the requirements for welfare eligibility:

a) Sentence to be inserted as a new paragraph immediately after 7.21.

"For the purposes of this 7.21, hours paid under the 'Pay Guarantee Plan' to Employees with limited Registration shall be deemed to be hours worked."

b) Sentence to be inserted as a new paragraph immediately prior to the last paragraph in 7.22.

"For the purposes of this 7.22, hours paid under the 'Pay Guarantee Plan' to Employees with limited Registration shall be deemed to be hours worked."

10. Employees, or their beneficiaries, whose death or disability benefits were reduced as a result of the Sixth Amendment to the M & M Agreement, shall receive the total amount of benefits payable without regard to the Sixth Amendment.

V. CFS SUPPLEMENT

A. SECTION 1—SCOPE OF WORK

1. Amended Section 1.1 as follows:

"1.1 The stuffing and unstuffing of containers by Container Freight Station Utilitymen and Container Freight Station Clerks in a Container Freight Station (hereinafter referred to as a CFS) is work covered by this Supplement."

2. Delete subsection 1.13, and renumber subsection 1.14 to 1.13.

3. Delete subsections 1.5, 1.51, 1.52, 1.53, 1.531, 1.532, 1.533, 1.534, 1.54, 1.541, 1.542 and 1.543 and substitute the following:

"1.5 Containers, Zones and Container Tax. The provisions of this section are intended to protect and preserve the established work of employees covered by the PMA/ILWU Pacific Coast Longshore & Clerks Agreement and this CFS Supplement at docks or areas adjacent thereto.

"1.51 Containers defined. For the purposes of this section, the term 'container' means a single rigid, non-

disposal dry cargo, insulated, refrigerated, flatrack, vehicle rack, portable liquid tank, or open-top container. All types of containers will have constructions, fittings, and fastenings able to withstand, without permanent distortion, all the stresses that may be applied in normal service use of continuous transportation, and shall have minimum total outside dimensions of 8′ x 8′ x 8′ and have an opening or permanently hinged door(s) that allow ready access to the cargo space.

"1.52 Zones defined. There shall be two defined zones as follows:

"1.521 First, there shall be a zone in each port to be known as the 'Waterfront Zone.' Except for the San Francisco Bay Area and the Los Angeles/Long Beach Harbor, the 'Waterfront Zone' in all ports shall include any area which is within one (1) mile of any present or future waterfront 'dock' as defined in Pacific Coast Longshore and Clerks Agreement. The 'Waterfront Zone' in the San Francisco Bay Area and the Los Angeles/Long Beach Harbor shall be as follows:

San Francisco Bay Area:

Beginning at a point at the southern end of the Golden Gate Bridge; proceeding on Highway 101 to Marina Blvd.; then to Cervantes, then to Bay St.; then to Columbus; then to Broadway; then to Sansome; following Market St. to Third Street southward to the old Bayshore Highway back to Highway 101; from Highway 101 southward to Randolf Ave.; then to Chestnut Ave.; then to El Camino Real continuing southward to Santa Clara; at this point continuing eastward to Alum Rock Ave.; then turning northward on Capitol Ave. to Highway 680; northward on Highway 680 to Highway 238 into Hayward; then to Mission Blvd. to East 14th Street in San Leandro; along East 14th St. northward into Oakland turning on to San Pablo Avenue; following San Pablo Avenue through Albany, the city of San Pablo and through Pinole to Highway 80; eastward along Highway 80 to Highway 4 continuing on to the Antioch Bridge; then northward along Highway 160 to Highway

12 into Fairfield; on to Highway 80, then continuing westward on Highway 80 to American Canyon Road to Highway 29; southward to Highway 37; westward to Highway 101; then southward to the Golden Gate Bridge and the completion of the circle."

Los Angeles/Long Beach Harbor:

Beginning at the point where Western Avenue meets the sea; then north on Western Avenue to Pacific Coast Highway; east on Pacific Coast Highway to Atlantic Avenue; south on Atlantic Avenue to the sea. (Further, it is agreed: (1), that any area within the Port Area CFS Zone which is now or in the future under the control of a Habor Department shall be treated as being within the Waterfront Zone and (2), that should Anaheim Bay/Seal Beach be expanded into a commercial dock facility, the Waterfront Zone shall at such time be re-defined by the parties.)

"1.5211 It is recognized that in some ports and areas it may be impossible or impractical for a PMA member to operate a CFS within the confines of the Waterfront Zone. In such cases a PMA member shall be permitted to locate a CFS outside of the Waterfront Zone but within the Port Area CFS Zone and such CFS shall be treated as being within the Waterfront Zone for purposes of this CFS Supplement.

"1.522 Second, there shall be a zone known as the Port Area CFS Zone. This shall include an area of 50 miles radius from each dispatch hall in each port covered by the PMA-ILWU Agreement.

"1.53 Container Tax. Except as provided below, all cargo in containers, as defined in Section 1.51, which is loaded aboard or discharged from vessels will be assessed a tax of $1.00 per long ton of 2,240 pounds. Such tax shall be collected and be used as an offset toward the cost of the Pay Guarantee Plan, with surplus, if any to be used to reduce unfunded past service Pension liability.

"1.531 The tax described in Section 1.53 shall not apply to:

"(a) Cargo in containers stuffed or unstuffed by ILWU labor employed by PMA members under terms of the PCL & CA or this CFS Supplement.

"(b) Cargo in outbound containers originating outside of any Port Area CFS Zone or cargo in inbound containers destined for delivery outside of any Port Area CFS Zone.

"(c) Cargo in containers originating within or destined for delivery within any Port Area CFS Zone to or from retail or wholesale warehouses, factories, or processing plants.

"(d) Household goods in containers which are stuffed or unstuffed by a moving company.

"(e) Cargo in containers moving coastwise or intercoastal. 'Coastwise' means the West Coast of the North American Continent.

"(f) Cargo in containers stuffed or unstuffed in the 'store door' method of pick-up or delivery in the 'domestic trade.' 'Store door' method is defined to mean the stuffing or unstuffing of cargo into or out of containers at one or more wholesale or retail warehouses, factories, or processing plants when pick-up or delivery service is the responsibility of the Ocean Carrier. 'Domestic trade' includes intercoastal, West Coast of the continental United States including Alaska, Hawaii, Guam, Puerto Rico, and any other U.S. insular possession.

"(g) Cargo in containers which are trans-shipped and where the tax has been paid once.

"1.54 Containers originating in or destined for delivery within a Port Area CFS Zone, which are to be loaded on or have been discharged from a non-PMA member steamship company vessel, shall be stuffed or unstuffed by ILWU labor employed by an employer signatory to the PCL & CA or this CFS Supplement, unless cargo in such containers has tax-free status under Section 1.531(c) through (g).

"1.55 Containers originating at or destined for delivery to a non-PMA member facility employing ILWU labor within the Port Area CFS Zone shall be stuffed or unstuffed by ILWU labor employed by an employer signatory to the PCL & CA or this CFS Supplement,

unless cargo in such containers has tax-free status under Section 1.531(c) through (g).

"1.56 Where there is a jurisdictional problem between two segments of the ILWU having to do with stuffing and unstuffing of containers, containers will be discharged or loaded without a tax and as directed by the employer without interference by the ILWU, and the ILWU will be responsible for solving its own jurisdictional problems.

"1.57 Effective on the date of ratification of the new PCL & CA Agreement, of which this is a Supplement, PMA members shall discontinue their past practice of subcontracting of stuffing or unstuffing of containers in the Waterfront Zone or the Port Area CFS Zone by employers not parties to this Agreement. Such subcontracting practices may continue during the period legally required by the subcontract plus any additional time required to build, expand, lease, equip or provide facilities to be operated within the Waterfront Zone under the Agreement. During such period containers may be received from or delivered to such subcontractors without tax, but such tax-free period shall not extend beyond 90 days from date of ratification of this Agreement. Each company having subcontracts will promptly notify PMA of the date it will be operating under this Agreement, and such information will be furnished to the Union. Facilities built, leased, or expanded or provided under this subsection will be within the designated Waterfront Zone.

"1.58 If the ILWU (Longshore/Clerks Division—the International or local) has negotiated or negotiates a CFS contract with a PMA member or nonmember with terms and conditions dealing with the handling of containerized cargo that are more favorable to said member or nonmember than the terms and conditions of this CFS Supplement or the PCL & CA, such contract shall be available to PMA members operating under this CFS Supplement or the PCL & CA.

B. SECTION 4—WAGES

Amend subsections 4.11 and 4.12 as follows:

"4.11 CFS utilitymen and CFS clerks: Effective 8:00 a.m. December 25, 1971 the rate shall be $5.625 and effective 8:00 a.m. July 1, 1972 the rate shall be $6.075.

"4.12 Working supervisory CFS clerk: Effective 8:00 a.m. December 25, 1971 the rate shall be $6.19 and effective 8:00 a.m. July 1, 1972 the rate shall be $6.68.

C. SECTION 9—GRIEVANCE PROCEDURE

Delete subsections 9.12 and 9.13.

D. SECTION 12—HEALTH AND WELFARE AND PENSIONS AND M&M

1. Change the heading of this section to read, "SECTION 12—HEALTH, WELFARE AND PENSIONS."

2. Delete subsections 12.5 and 12.6.

E. Time worked under this Contract Supplement by any CFS employee shall count as time worked as a longshoreman or clerk under the ILWU-PMA Pension Plan, and the Guarantee Plan for A and B registered longshoremen and clerks.

VI. SUBSISTENCE AND LODGING

Section 6.5. Amend by increasing the lodging allowance from $5.00 per night to $8.00 per night for longshoremen and from $6.50 per night to $9.50 per night for clerks. Amend by increasing the meal allowance from $2.00 per meal to $3.00 per meal for both longshoremen and clerks.

VII. DISPATCHING, REGISTRATION AND PREFERENCE

A. Section 8.36. *Add* a new section as follows:

"8.36 The parties at the Coast Labor Relations Committee level shall establish a work force adjustment procedure for any port which becomes a 'low work opportunity port.' Such procedure shall include matters such as transfer conditions, method of selecting men for transfer to another port, and qualification status for payments under the 'Guaranteed Work Opportunity Plan.'

"8.361 A port shall be considered a 'low work opportunity port' when the average hours of the port for a six-month consecutive period are below two-thirds of the coastwise average hours.

"8.362 As soon as a port becomes a 'low work opportunity port,' the Coast Labor Relations Committee shall, as provided in Section 8.36, meet promptly. If the Coast Labor Relations Committee is unable to agree on a work force adjustment procedure the matter shall be submitted to the Coast Arbitrator within 30 days for decision."

VIII. HEALTH AND SAFETY AND PENALTY CARGO

The Parties agree to refer to a joint subcommittee the task of updating the existing Pacific Coast Marine Safety Code and the Penalty Cargo List, with a six-month time limit after the new Agreement becomes effective to accomplish their assignment. The penalty cargo rates shall not be subject to change.

APPLICABLE ONLY TO LONGSHORE

I. SKILL DIFFERENTIALS

The skill differential rates in Section 6.33 shall be increased as follows:

15¢ per hour increased to 25¢ per hour
20¢ per hour increased to 35¢ per hour
30¢ per hour increased to 50¢ per hour
40¢ per hour increased to 70¢ per hour

II. 9.43 MEN

1. Retain present Section 9.43 and interpretations except as modified by 2 below.
2. Add a new Section 9.431 as follows:

"(A) Steady skilled men cannot be assigned to operate winches.

"(B) Steady skilled men cannot be assigned to operate basic fork lifts up to five-ton capacity except under the following circumstances:

"a) To fill out the 8-hour guarantee;
"b) To move equipment around incidental to their other duties."

3. Equalization of hours and methods of dispatching and definition of basic fork lift shall be worked out at the local level, or settled by the Coast Arbitrator no later than five days after adjournment of Coast Caucus if Caucus approves contract as recommended by Negotiating Committee.

III. OTHER CATEGORIES OF STEADY MEN

The Employers assume that all other categories of steady men such as gearmen, sweepers, utility lift drivers, crane operators, coopers, etc., will return to their former steady employment if requested by their Employers.

Any question that may develop over the application of this provision shall be settled in accordance with the agreement on 9.43 men, specifically paragraph 3.

APPLICABLE ONLY TO CLERKS

I. SAFETY TRAINING

Safety and first aid training shall be provided by the Employers to Supercargoes or Supervisors who wish to qualify to render first aid, subject to the parties at the local level determining the extent, necessity, number of men, selection of men, and implementation of such training.

II. EMPLOYMENT OF SUPERCARGO

Add a new sub-section 1.2541 as follows:

"At those locations and under those conditions where a PMA vessel is required to employ a Supercargo, a nonmember vessel will not be worked by a PMA member unless the nonmember vessel employs a Supercargo."

III. SHELTERS

The question of the necessity of providing adequate stationary or mobile dock shelters for the performance of clerks' paper work on docks controlled by PMA Employers is referred to the parties at the local level. The Union shall submit to the Employers at the local level, within sixty (60) days, a list of the locations where they believe such shelters are necessary. The parties shall then survey such locations and endeavor to reach a determination as to the necessity of providing shelters. If agreement cannot be reached, the matter shall be referred to the Area Arbitrator for determination.

The Union shall not be precluded from raising the question of the necessity of providing adequate stationary or mobile dock shelters within sixty (60) days at dock locations not presently in operation.

When a PMA employer works at a dock not controlled by a PMA member, the PMA employer will endeavor to work out at the local level any question raised as to the necessity of providing an adequate place to work at such location.

GENERAL PROVISIONS APPLICABLE TO THE PACIFIC COAST LONGSHORE AND CLERKS AGREEMENT

(A) *Travel Time.* The Employers will not be foreclosed from requesting further discussion on the subject of existing travel time and pay.

(B) *Lawsuits.* All PMA lawsuits against the ILWU or any of its locals are dropped and all lawsuits of the ILWU or any of its locals against PMA or its member companies are dropped.

(C) *M&M.* Delete from Section 21 the references to "Mechanization and Modernization Plans."

(D) *Items Referred to Mediation/Arbitration.* If the Parties are unable to resolve the following items by further negotiation or mediation, they shall be submitted for resolution to the Coast Arbitrator whose decision shall be final and binding:

1. Hours	PMA Proposal 4/8/71 ILWU 11/16/70 (Extended Shifts)
2. Grievance Machinery	ILWU Proposal 8/26/71 PMA Proposal 8/30/71
3. Stop Work Meetings	PMA Proposal 8/30/71
4. High Piling	PMA Proposal 9/21/71
5. Scope of Work	Contract coverage on industrial docks; teamsters unloading trucks on dock; log assembly ILWU Proposal 8/26/71
6. Manning	L.A.S.H., Seabee, RO/RO to be the same as East Coast manning; other manning as per ILWU Proposal 8/26/71 PMA Proposal 5/7/71
7. Clerks' Jurisdiction	ILWU Proposal 2/5/71

8. Local negotiations	ILWU Proposal 1/16/72 PMA Proposal 1/17/72
9. PMA Demands	
a) Nonmember participation	PMA Proposal 4/8/71
b) Protection against dispatch law suits	PMA Proposal 4/8/71
c) Gear Priority	PMA Proposal 4/8/71
d) Skill Rate Application	PMA Proposal 9/21/71 ILWU Proposal
10. Training	ILWU Proposal 11/16/70
11. Amend Crane Supplement	ILWU Proposal 11/16/70 PMA Proposal 4/8/71

(E) *Effective Date.* All amendments to the ILWU-PMA 1966-1971 Pacific Coast Longshore and Clerks Agreement contained in this Memorandum of Understanding shall become effective following ratification by both parties, unless specified otherwise in this Memorandum of Understanding or unless specified below:

a) *Retroactive Wage Payments*

Retroactive wage adjustments shall be paid to individuals, on the basis of their payroll hours, as soon as practical after government approval is obtained but in no event later than six weeks thereafter. Payments will be made at such time for the following periods:

(1) December 25, 1971 until the beginning of the payroll week following ratification—during this period retroactive pay shall not include skill differentials or subsistence and lodging.

(2) From the beginning of the payroll week following ratification until the payroll week following government approval when the negotiated increases are paid on a current basis—during this period retroactive pay shall include skill differentials and subsistence and lodging increases.

(F) *Ratification.* This Memorandum of Understanding is subject to ratification by both Parties.

(G) *Government Approval.* This Memorandum of Understanding and all local agreements are subject to the approval of agencies of the United States having jurisdiction over pay and price increases. Such applications for approval by government agencies shall be made after resolution and ratification of this Memorandum of Understanding and all local agreements in all ports, within five (5) days following ratification. In the event that necessary government agency approvals are not obtained within thirty (30) days after the filing of applications, either party may give written notice of cancellation in which event this Memorandum of Understanding and all local agreements shall expire unless new agreements are negotiated within such period, or approval is attained. Each Party agrees to cooperate fully with the other with respect to the making and processing of any applications which may be required by law.

(H) *IRS Approval.* Implementation of the Pay Guarantee Plan, Pension Plan improvements, and Welfare improvements are subject to and conditioned upon the Commissioner of Internal Revenue determining that each of said Plans meets the requirements of the Internal Revenue Code relative to same, and that contributions to the Plans will be or will continue to be deductible for Federal Income Tax purposes.

(I) *Term of Agreement.* Amend Section 20.1 by changing the termination date to 8:00 A.M., July 1, 1973.

Dated: February 10, 1972

PACIFIC MARITIME ASSOCIATION
on behalf of its members:

/s/ B. H. Goodenough

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, on behalf of itself and all longshore and clerks locals in California, Oregon and Washington:

/s/ Harry Bridges

FIRST AMENDMENT
to the
MEMORANDUM OF UNDERSTANDING

Dated 2/10/72

between

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION

and

PACIFIC MARITIME ASSOCIATION

The Pacific Maritime Association and the International Longshoremen's Union agree to the following amendment of the Memorandum of Understanding between them dated February 10, 1972.

Paragraph (G) of the section titled, *"General Provisions Applicable to the Pacific Coast Longshore and Clerks Agreement"* is amended in its entirety, and shall read:

"(G) *Government Approval.* This Memorandum of Understanding is subject to the approval of agencies of the United States having jurisdiction over pay and price increases.

"If satisfactory government agency approval for pay and price increases are not obtained by May 8, 1972, either party may at any time thereafter give written notice of cancellation, in which event this Memorandum of Understanding shall expire.

"Should such notice of cancellation be given, the parties shall meet immediately for the purpose of negotiating a new Memorandum of Understanding."

DATED: April 14, 1972

PACIFIC MARITIME ASSOCIATION
on behalf of its members:

/s/ Ed. J. Flynn
President

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, on behalf of itself and all longshore and clerks locals in California, Oregon and Washington

/s/ Harry Bridges
President

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SECOND AGREEMENT
to the
MEMORANDUM OF UNDERSTANDING

Dated 2/10/72

between

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION

and

PACIFIC MARITIME ASSOCIATION

The Pacific Maritime Association and the International Longshoremen's Union agree to the following amendments of the Memorandum of Understanding between them dated February 10, 1972.

1. Section I, titled "Wages," is amended

   a. In the first paragraph under the heading "Longshore" by deleting "seventy-two cents (72¢)" and substituting therefor "forty-two cents (42¢)";
   b. In the first paragraph under the heading "Clerks," by deleting $5.625" and "$8.44" and substituting therefor "$5.29" and "$7.935," respectively; and
   c. In the remaining paragraphs under the hearings "Longshore" and "Clerks" and in Section V, B, Section 4 "WAGES" by making additional wage rate changes required by the amendments in "a" and "b" immediately preceding.

2. Paragraph (E) (a) (2) of the section titled "*General Provisions Applicable to the Pacific Coast Longshore and Clerks Agreement*" is amended by deleting "following government approval" and substituting therefor "beginning June 3, 1972."

3. Paragraph (I) of the section titled "*General Provisions Applicable to the Pacific Coast Longshore and Clerks Agreement*" is amended in its entirety, and shall read:

"I. *Term of Agreement.* Amend Section 20.1 by changing the termination date to 8:00 A.M., July 1, 1973, *provided*:

a) if U.S. government wage or price controls are eliminated on or before November 30, 1972, either party may give sixty (60) days' written notice of cancellation after the date of elimination of controls in which event this Memorandum of Understanding shall expire;

b) notwithstanding a) above, if U.S. government wage or price controls are not in effect on January 31, 1973 or if U.S. government wage or price controls are eliminated on or after January 31, 1973 either party may give twenty-four (24) hours' written notice of cancellation after the date of elimination of controls in which event this Memorandum of Understanding shall expire;

c) should notice of cancellation be given, the parties shall meet immediately for the purpose of negotiating a new Memorandum of Understanding:

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, on behalf of itself and all longshore and clerks locals in California, Oregon and Washington

/s/ Harry Bridges
President

Dated: May 11, 1972

PACIFIC MARITIME ASSOCIATION
on behalf of its members:

/s/ Ed. J. Flynn
President

February 22, 1972

NO. 1
SUPPLEMENT
MEMORANDUM OF UNDERSTANDING

The "Memorandum of Understanding" between the Parties dated February 10, 1972 spells out in Item (D) of "General Provisions Applicable To The Pacific Coast Longshore and Clerks Agreement" a listing of eleven (11) items to be resolved by further negotiation, mediation or arbitration.

This "Supplemental Memorandum of Understanding" covers understandings reached by the Parties on February 20, 1972 with respect to certain of those eleven items as indicated below.

Item 8—Local Negotiations

(a) In those areas or ports where local negotiations have not been concluded, the local Parties shall continue such negotiations until April 30, 1972. If, on that date, there are remaining unresolved issues, such issues shall be either dropped or submitted to the Area Arbitrator, provided the local Parties mutually agree to refer such unresolved issues to the Area Arbitrator. The Area Arbitrator shall render his decision on the unresolved issues no later than May 10, 1972.

(b) Until such time as all local issues in a port are concluded as in (a) above, the terms and conditions of all local Agreements which were in effect on June 30, 1971 shall remain in effect. When all local issues are resolved as provided in (3) above, the terms and conditions of such revised Agreements shall be placed into effect.

(c) The provisions of (a) and (b) above do not apply to those issues settled by the local Parties or the Coast Arbitrator under Item II "9.43 men" and Item III "Other Categories of Steady Men" of the February 10, 1972 Memorandum of Understanding.

Item 9(d)—Skill Rate Application

PMA withdraws its proposal of September 21, 1971 and the Union withdraws its proposal of November 16, 1970, both proposals pertaining to the application of skill rate differentials.

This means that the negotiated skilled rate differentials will be applied to the skills as presently contained in Section 6.33 of the PCLCD. By applying the skill rate differentials on this basis, the Parties agree that there remains one unresolved issue which will be settled by the Coast Arbitrator, i.e., the application of skill differential rates to the categories of "Gang Boss" and "Hatch Boss Tender."

Item 11—Amend Crane Supplement

The Parties reviewed PMA's proposal of April 8, 1971 and the Union's proposal of November 16, 1970, both relating to the Crane Supplement and agreed that, since these matters are being discussed in local negotiations, they will be held over at the Coast negotiating level pending the outcome of local negotiations.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, on behalf of itself and all longshore and clerks locals in California, Oregon and Washington

/s/ Wm. T. Ward

Dated: February 22, 1972

PACIFIC MARITIME ASSOCIATION
on behalf of its members:

/s/ B. H. Goodenough

March 1, 1972

NO. 2
SUPPLEMENTAL
MEMORANDUM OF UNDERSTANDING

The "Memorandum of Understanding" between the Parties dated February 10, 1972 spells out in Item (D) of "General Provisions Applicable to The Pacific Coast Longshore and Clerks Agreement" a listing of eleven (11) items to be resolved by further negotiation, mediation or arbitration.

This "Supplemental Memorandum of Understanding" covers an understanding reached by the Parties on March 1, 1972 with respect to one of those eleven items as indicated below.

Item 9(d)—Skill Rate Application

The Supplemental Memorandum of Understanding dated February 22, 1972 states "there remains one unresolved issue which will be settled by the Coast Arbitrator, i.e., the application of skill differential rates to the categories of 'Gang Boss' and 'Hatch Boss Tender'." The Parties agree that this issue is now resolved by application of the skilled differential rates as follows:

	So. Cal.	No. Cal.	Ore.	Wash.
Gang Boss	.40[1]	.35	.35	—
Hatch Boss Tender[2]	—	—	—	.35

[1] Applfies to Pt. Hueneme only.

[2] Applies to Tacoma, Anacortes and Port Angeles only.

Vacations

In the context with the intent of the Parties in negotiating the Pay Guarantee Plan, the parties hereby agree that section 7.21 of the Pacific Coast Longshore & Clerks Agreement shall be amended as follows:

"7.21 Qualifying hours for vacation purposes shall include all hours for which pay is received, except vacation hours and 'Pay Guarantee Plan' hours."

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, on behalf of itself and all longshore and clerks locals in California, Oregon and Washington

/s/ Wm. T. Ward

Dated: March 1, 1972

PACIFIC MARITIME ASSOCIATION
on behalf of its members:

/s/ B. H. Goodenough

April 24, 1972

NO. 3
SUPPLEMENTAL
MEMORANDUM OF UNDERSTANDING

The "Memorandum of Understanding" between the Parties dated February 10, 1972 spells out in Item (D) of "General Provisions Applicable To The Pacific Coast Longshore and Clerks Agreement" a listing of eleven (11) items to be resolved by further negotiations, mediation or arbitration.

This "Supplemental Memorandum of Understanding" covers understandings reached by the Parties with respect to two of those items as indicated below.

Item 4—High Piling

The Parties agree that this item is resolved by the following understanding:

A. Delete Appendix I "Standard Maximum Sling Loads" and amend Section 1.24 to read as follows:

"1.24 Any load of cargo discharged from a vessel may, in whole or part, be rearranged if necessary for dock storage. Such cargo shall not be considered high piled unless stored more than two loads high."

B. Add a new Section 1.241 as follows:

"1.241 Newsprint in rolls shall not be considered high piled unless stored more than two high, except that half size rolls (36" or less in height) shall not be considered high piled unless stored more than four high."

Item 10—Training

The Union agrees to drop its proposal of November 16, 1970.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, on behalf of itself and all longshore and clerks locals in California, Oregon and Washington

/s/ Wm. T. Ward

Dated: April 24, 1972

PACIFIC MARITIME ASSOCIATION
on behalf of its members:

/s/ B. H. Goodenough

April 25, 1972

NO. 4
SUPPLEMENTAL
MEMORANDUM OF UNDERSTANDING

The "Memorandum of Understanding" between the Parties dated February 10, 1972 spells out in Item (D) of "General Provisions Applicable To The Pacific Coast Longshore and Clerks Agreement" a listing of eleven (11) items to be resolved by further negotiations, mediation or arbitration.

This "Supplemental Memorandum of Understanding" covers an understanding reached by the Parties with respect to one of those items as indicated below.

Item 9(a)—Nonmember Participation

The parties agree that this item is resolved by an agreement reached on a new "ILWU-PMA Nonmember Participation Agreement," which is quoted below:

QUOTE:

ILWU-PMA NONMEMBER PARTICIPATION AGREEMENT

The PMA-ILWU jointly registered work force (hereinafter referred to as the "joint work force") exists as a result of the registration process beginning in 1935 under successive Pacific Coast Longshore and Clerks Agreements (herein called "PCLCA") and the Walking Bosses and Foremen's Agreement. These agreements have been between the Pacific Maritime Association and its predecessors (PMA) and the International Longshoremen's and Warehousemen's Union and its longshore, clerks and walking bosses/foremen's locals in California, Oregon and Washington (ILWU). The men in the joint work force have "jobs" in which they work on an interchangeable basis for the many business entities involved in or related to the movement of cargo to and from ships in California, Oregon and Washington. Some of these

business entities are not members of PMA. The following provisions apply to such nonmembers of PMA.

1. A business entity not a member of PMA must participate in this ILWU-PMA Nonmember Participation Agreement if it uses men in the joint work force.

2. The nonmember participant's separate ILWU contract must conform with the provisions hereof, and the provisions of the PCLCA governing the selection of men for inclusion in the joint work force.

3. A nonmember participant will share in the use of the joint work force upon the same terms as apply to members of PMA. The nonmember participant shall obtain men, units of men and gangs of men through the allocation system operated by PMA, from the dispatching halls operated jointly by ILWU and PMA. If a nonmember participant obtains men within the joint work force other than through the allocation system or the dispatching system referred to herein, such nonmember participant shall thereafter be disqualified from use of the joint work force, subject to the conditions of paragraph 11 of this Nonmember Participation Agreement.

a. A nonmember participant may obtain and employ a man in the joint work force on a steady basis in the same way a member may do so. When such participant employs a man to work on a steady basis, it shall notify PMA immediately. On request from PMA, each such participant shall furnish to PMA a list of men it is using on a steady basis. Steady men shall participate in the Pay Guarantee Plan in accordance with the rules that are adopted by PMA and ILWU.

b. For purposes of 1.53 through 1.57 of the Container Freight Station Supplement (CFSS) of the PCLCA, a nonmember participant who uses the joint work force at terms and conditions of employment no more favorable to the nonmember participant than those provided under the PCLCA, including the CFSS, may be deemed to be a "member of PMA" insofar as it is so using the joint work force.

Note: If a prospective nonmember participant has an agreement with the ILWU which provides for utilization of the joint work force at terms and conditions of

employment more favorable to the nonmember than those provided under the PCLCA, including the CFSS, such nonmember must alter that agreement to conform to the PCLCA, including the CFSS, in order to become a nonmember participant.

4. The nonmember participant shall participate in the ILWU-PMA Pension Plan, the ILWU-PMA Welfare Plan, the PMA Vacation Plans (longshoremen and clerks, and walking bosses/foremen) and the ILWU-PMA Guarantee Plans (longshoremen and clerks, and walking bosses/formen) in accordance with the terms applicable to such participation. Such nonmember shall make payments into these Plans at the same rates and at the same times as members of PMA are to make the respective payments. Attached are statements of terms and conditions currently in effect with respect to such participation. Nonmember participants shall be subject to the same audits as members of PMA.

5. The nonmember participant shall use the PMA central pay system and central records office and must sign the standard forms of participation documents for the central records office and central pay system. Amounts due with respect to the central pay and central records system shall be paid to PMA at the time and in the manner prescribed for members of PMA.

Note: The hours for which pay is distributed through the central pay office to any man within the joint work force, with respect to his being used by such nonmember pursuant to the terms hereof, shall be deemed hours of work for a PMA member company for purposes of determining the individual longshoreman's eligibility for vacations, welfare, pensions, pay guarantee, promotion, transfer, advancement in registered status, seniority, and all other aspects of his work history as a member of the joint work force.

6. Each nonmember participant shall pay to the PMA an amount equal to the dues, and assessments, that a PMA member would pay. Payments shall be made at the time the member would pay. Each nonmember participant shall be liable proportionately to meet any obligations of PMA or of the PMA membership with respect

to any PMA action in the PMA-ILWU collective bargaining and contracting relationship that is covered by the terms hereof, including obligations accepted by PMA as being imposed by law.

7. If a nonmember participant becomes delinquent under paragraphs 4, 5, or 6 hereof no joint work force workers shall be furnished to the delinquent nonmember.

8. In case a labor dispute arises and there is a stoppage of the work that normally would be done under the PCLCA and the Walking Bosses and Foremen's Agreement, the nonmember participant shall be governed by the labor policy in regard to that work stoppage that is fixed by PMA in compliance with its By-Laws and to which notice thereof is given in writing to the nonmember participant by PMA.

9. Should there be a cessation of work at the end of the contract period of the PCLCA and the Walking Bosses and Foremen's Agreement, or thereafter while negotiations are continuing toward a renewal or substitute contract, the PMA labor policy as to what work shall be done and under what terms and conditions shall apply to each nonmember participant the same as it applies to PMA members provided written notice thereof is given by PMA to the nonmember participant. The nonmember participant so notified shall accept the PMA labor policy in regard to such situation as its labor policy.

10. A nonmember participant who carries on work during any work stoppage within the PCLCA or the Walking Bosses and Foremen's Agreement contract period or during any post-contract strike or lockout in knowing violation of any labor policy of PMA referred to in paragraphs 8 through 9 hereof shall thereby terminate its right thereafter to obtain any workers from the joint work force. Any hours worked contrary to PMA labor policy during the period of any stoppage, strike or lockout covered by paragraphs 8 or 9 hereof shall not be considered as hours worked for purposes of vacation, welfare, pension, seniority, availability for dispatch, etc.

11. Should any nonmember participant cease to have the right to obtain men through the allocation and dis-

patching system, such nonmember shall nevertheless continue under a duty to meet all of its obligations based upon its use of the joint work force including accrued obligations for PMA assessments and dues, obligations for retroactive and current assessments for fringe benefits, obligations to meet liabilities under paragraph 7 hereof, and all other obligations with respect to the pay of workers paid through the central pay office during the period of its participation in the use of the joint work force.

12. It is believed that all provisions of this agreement are now lawful, and it is assumed that they will continue to be lawful. Should there at any time be a determination that any portion of this agreement is contrary to law, the remaining provisions shall continue to be binding upon the parties unless ILWU or PMA gives notice of the termination of this entire agreement.

13. The ILWU-PMA Nonmember Participation Agreement shall be binding and continue in effect without a terminal date, unless jointly terminated by the PMA and ILWU. An entity may terminate its participation only on such terms and conditions as may be mutually agreed to by the PMA, the ILWU and the participant. An entity that terminates its participation shall at such time no longer be eligible to employ men in the joint work force nor to participate in the Pension, Welfare, Vacation

and Pay Guarantee Plans existing between ILWU and PMA.

Dated: _____ Agreed to by:

_____

(Participant)

By _____

Approved by

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, on behalf of itself and all longshore and clerks locals in California, Oregon and Washington

_____

Approved by
PACIFIC MARITIME ASSOCIATION,
on behalf of its members

_____

_____

UNQUOTE.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, on behalf of itself and all longshore and clerks locals in California, Oregon and Washington:

/s/ Wm. T. Ward

Dated: April 25, 1972

PACIFIC MARITIME ASSOCIATION,
on behalf of its members:

/s/ B. H. Goodenough

NO. 5
SUPPLEMENTAL
MEMORANDUM OF UNDERSTANDING

In conformity with the wage rate adjustments provided in the Second Amendment to the Memorandum of Understanding, dated May 11, 1972, this Supplemental Memorandum of Understanding amends the wage rate sections of the "Memorandum of Understanding dated February 10, 1972" as follows:

I. WAGES

"Longshore

"The basic straight time hourly rate for men paid on a six(6) hour day basis shall be increased by forty-two cents (42¢) per hour effective 8:00 a.m. on December 25, 1971.

"This brings the basic straight time rate to $4.70 per hour and the overtime rate to $7.05 per hour.

"Effective 8:00 a.m. on July 1, 1972 the basic straight time hourly rate for men paid on the six (6) hour day basis shall be increased by an additional forty cents (40¢) per hour. This brings the straight time rate to $5.10 per hour and the overtime rate to $7.65 per hour.

"For special categories of longshoremen historically paid on an eight (8) hour straight time basis, the straight time hourly rate shall be increased as follows:

"Effective 8:00 a.m., December 25, 1971—47.5¢
"Effective 8:00 a.m., July 1, 1972—45¢

"Clerks

"Effective 8:00 a.m. on December 25, 1971 the straight time hourly rate for clerks will be $5.29 per hour and the overtime rate will be $7.935.

"Effective 8:00 a.m. on December 25, 1971 the straight time hourly rate for (clerk) supervisors will be $5.815 and the overtime rate will be $8.72.

"Effective 8:00 a.m. on December 25, 1971 the straight time hourly rate for (clerk) chief supervisors and supercargoes will be $6.465 and the overtime rate will be $9.70.

"Effective 8:00 a.m. on July 1, 1972 the straight time hourly rate for clerks will be $5.74 and the overtime rate will be $8.61; the straight time hourly rate for (clerk) supervisors will be $6.31 and the overtime rate will be $9.465; the straight time rate for (clerk) chief supervisors and supercargoes will be $7.005 and the overtime rate will be $10.51."

V. CFS SUPPLEMENT

"B. SECTION 4—WAGES

"Amend subsections 4.11 and 4.12 as follows:

"4.11 CFS utilitymen and CFS clerks: Effective 8:00 a.m. December 25, 1971 the rate shall be $5.29 and effective 8:00 a.m. July 1, 1972 the rate shall be $5.74.

"4.12 Working supervisory CFS clerk: Effective 8:00 a.m. December 25, 1971 the rate shall be $5.815 and effective 8:00 a.m. July 1, 1972 the rate shall be $6.31."

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, on behalf of itself and all longshore and clerks locals in California, Oregon and Washington

/s/ Wm. T. Ward

Dated: May 12, 1972

PACIFIC MARITIME ASSOCIATION
on behalf of its members:

/s/ B. H. Goodenough

June 2, 1972

June 2, 1972

NO. 6
SUPPLEMENTAL
MEMORANDUM OF UNDERSTANDING

The "Memorandum of Understanding" between the Parties dated February 10, 1972 spells out in Item (D) of "General Provisions Applicable To The Pacific Coast Longshore and Clerks Agreement" a listing of eleven (11) items to be resolved by further negotiation, mediation or arbitration.

This "Supplemental Memorandum of Understanding" covers understandings reached by the Parties with respect to two of those items as indicated below.

Item 2—Grievance Machinery

Both parties agree to drop their "grievance machinery" proposals.

Item 5—Scope of Work

The Union agrees to withdraw this item from the mediation/arbitration procedure. These jurisdictional matters are to be subsequently resolved by the Parties on a case-by-case basis.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, on behalf of itself and all longshore and clerks locals in California, Oregon and Washington

/s/ Wm. T. Ward

Dated: June 2, 1972

PACIFIC MARITIME ASSOCIATION
on behalf of its members:

/s/ B. H. Goodenough

June 20, 1972

NO. 7
SUPPLEMENTAL
MEMORANDUM OF UNDERSTANDING

The "Memorandum of Understanding" between the Parties dated February 10, 1972 spells out in Item (D) of "General Provisions Applicable To The Pacific Coast Longshore and Clerks Agreement" a listing of eleven (11) items to be resolved by further negotiation, mediation or arbitration.

This "Supplemental Memorandum of Understanding" covers understandings reached by the Parties with respect to several of those items as indicated below.

Item 1—Hours

Both parties agree to drop their proposals on "Hours."

Item 9(b)—Protection Against Dispatch Law Suits

The parties agree that this item is resolved by inclusion of the following new language in the "grievance machinery" of Section 17 of the Pacific Coast Longshore and Clerks' Agreement.

> "Any dispute in which the Association or the Union asserts that any dispatching hall is dispatching employees who were not entitled to be dispatched, or who were dispatched out of sequence as to other persons entitled to priority dispatch shall be subject to prompt resolution through the grievance procedure of the Agreement when a complaint is filed by either party with the Joint Port Labor Relations Committee. If such complaint is not resolved within seven (7) days from the date of filing, the matter shall be referred to the Area Arbitrator whose decision shall be final and binding. The grievance procedure shall then be deemed 'exhausted.'"

Item 3—Stop-Work Meetings

The parties agree that this item is resolved by revision of Section 12.3 of the Pacific Coast Longshore and Clerks' Agreement as follows:

"12.3 Stop-Work Meetings.

"12.31 Each longshore (and clerks') local shall have the right to hold one regularly scheduled stop-work meeting each month during overtime hours. Such regular meetings by longshore and clerks' locals in a port or within an area shall be scheduled so as to provide maximum work opportunities in the port or area.

"12.32 Any other stop-work meetings must be mutually agreed to by PMA and the Union and PMA shall receive at least one week's notice of such non-scheduled meetings. They shall not occur more often than once a month."

Item 7—Clerks' Jurisdiction

The parties agree that this item is "held over."

Item 9(c)—Gear Priority

The Employers agree to drop their proposal of 4/8/71.

Item 11—Amend Crane Supplement

The Union agrees to drop their proposal of 11/16/70 and the Employers agree to drop their proposal of 4/8/71.

Item 6—Manning

The parties agree that this item is resolved in its entirety by revision of Sections 10.3 and 10.5 of the Pacific Coast Longshore Contract Document and an understanding on LASH manning as follows:

Section 10.3

"10.3(a) Manning for operations existing on June 20, 1972, including existing T-Letters where the method of operation has not changed, shall continue with the Employers having the right to ask for review of such manning through the contract machinery at the Coast LRC level. When such requests are made the review shall be based on a determination of necessary men as defined in 15.2 and the Employers shall not be bound or limited by the basic gang structure provided in 10.2.

"(b) Manning for operations existing on June 20, 1972, including existing T-Letters where a subsequent change in operation after the establishment of the original manning introduces a machine, or device, or new method of operation which results in the need for reduced or increased manning, shall be subject to review through the contract machinery at the Coast LRC level at the request of either party. Where such requests are made the review shall be based on a determination of necessary men as defined in 15.2 and the parties are not bound or limited by the basic gang structure provided in 10.2.

"(c) Any review under (a) or (b) above shall not include a review of the minimum manning provided in Section 10.21."

Section 10.5.

"10.5 When new methods of operation are introduced after June 20, 1972, the Employers at the Coast level shall submit to the Union a letter describing the operation and the proposed ship manning prior to the anticipated start of the operation. A copy of the letter shall be transmitted to the local Union in the port or ports where the new method of operation will take place. After such notification the following procedure shall be implemented,

"(a) The Joint Port Labor Relations Committee in the port where the new operation is to first take place shall meet promptly and reach agreement or disagreement on the Employers' proposed manning at least 48 hours prior to the anticipated initial starting time of the new operation. If agreement is reached on the Employers' proposed manning, such manning shall be ordered for the initial working shift of the ship.

"(b) If the Joint Port Labor Relations Committee under step (a) above does not reach agreement on the ship manning proposed by the Employers, the matter shall be immediately referred to the Area Arbitrator for resolution. The Area Arbitrator shall issue a prompt interim decision on the manning to be ordered for the initial working shift of the ship.

"(c) On the initial working shift of the ship, either party at the local level may request a Joint Port Labor Relations Committee meeting to observe the manning established by either step (a) or (b) above. If either party is dissatisfied with the manning, the Area Arbitrator shall be promptly called to the job. The Area Arbitrator shall observe the operation with the local parties, hear their contentions, and then issue a prompt formal decision on the manning that shall be binding on all subsequent shifts and on future operations in the port, unless changed under step (d) below.

"(d) Either party may appeal a decision by the Area Arbitrator under step (c) above to the Joint Coast Labor Relations Committee. Upon receipt of an appeal, the Joint Coast Labor Relations Committee shall meet within five (5) days, or later, if the parties agree on a subsequent meeting date. If agreement is not reached by the Joint Coast Labor Relations Committee, the matter shall be placed before the Coast Arbitrator whose decision on the manning shall be final and binding.

"10.51 If a new method of operation is to occur in different areas, the steps defined in 10.5(a) through (d) shall be applicable to the local parties in each area. 'Areas' is defined to mean Washington, Columbia River and Oregon Coast Ports, Northern California and Southern California.

"10.52 If a new method of operation is to occur at more than one port within an area, the Joint Area Labor Relations Committee shall function under the steps defined in 10.5(a) through (d) as a substitute for the Joint Port Labor Relations Committees in the area for the purpose of establishing uniform manning for the area.

"10.53 Any change in operation that introduces a machine, or device, or new method of operation that has as its purpose and effect the reduction of manning by eliminating unnecessary men below the manning specified in 10.2 and subordinate paragraphs, or previously approved letters, shall be presented by the Employers in a new letter. and shall be governed by the procedures provided in 10.5 and subordinate paragraphs."

LASH Manning

The parties agree that the manning for the LASH ships and LASH barges shall remain as defined in T-150 with the following exceptions as to manning on LASH barges:

a) On all LASH barge operations, except general break bulk cargo operations when the cargo is to be hand-handled piece by piece, the manning shall be skilled men and/or basic longshoremen as determined by the Employer.

b) On all LASH barge operations, which are general break bulk cargo operations with the cargo to be hand-handled piece by piece, the manning except for holdmen shall be as determined by the Employer. The manning for holdmen shall be four (4) holdmen, subject to the Union's right to claim that additional holdman manning is required because of onerousness. In such event the agreed-to procedure on "Onerousness" is to be followed to resolve such a dispute.

c) When cranes are utilized to load cargo to or discharge cargo from LASH barges, the manning on the operation of the cranes shall conform with applicable Agreement provisions.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, on behalf of itself and all longshore and clerks locals in California, Oregon and Washington:

/s/ Harry Bridges

Dated: June 20, 1972

PACIFIC MARITIME ASSOCIATION
on behalf of its members:

/s/ B. H. Goodenough

February 24, 1973

NO. 8
SUPPLEMENTAL
MEMORANDUM OF UNDERSTANDING

The "Memorandum of Understanding" between the parties dated February 10, 1972, spells out in Item (D) of the "General Provisions Applicable to the Pacific Coast Longshore and Clerks Agreement" a listing of eleven (11) items to be resolved by further negotiation, mediation or arbitration.

This "Supplemental Memorandum of Understanding" covers understandings reached by the Parties with respect to the final remaining item as indicated below.

Item 7—Clerks' Jurisdiction

The parties agree that this item is resolved by the following:

(a) The Pacific Coast Clerks' Contract Document is amended by the addition of a new subsection 1.25124 reading as follows:

> "1.25124 Also, weighing cargo and/or cargo containers on drive-on type scales and recording weights."

The following understandings apply to the new subsection 1.25124 quoted above:

(1) Where required by the Employer, the Union agrees that Clerks with necessary "Weighmaster Certificates" will be provided.

(2) Where a member company of the Pacific Maritime Association has an existing bargaining relationship, has granted recognition to, and has assigned the work described in subsection 1.25124 above to a bona fide labor bargaining unit as a result of such relationships and recognition, the assignment of such work herein to the ILWU Clerks, shall not become effective unless the ILWU Clerks obtain the right to represent such worker(s) or unless the ILWU Clerks can assume such work as-

signment with the concurrence of such other bargaining unit and without jurisdictional work stoppages.

(b) As provided in Section 15, the Employers have the right to introduce mechanical, electronic or other labor saving devices on any dock.

When work described in Section 1 of the PCCCD is performed by mechanical, electronic or other devices, the following understandings are applicable:

(1) The necessary operation of such devices shall be performed by Clerks for only that portion of the work which is recognized as being covered by Section 1 of the PCCCD.

(2) The intent of this provision is to preserve the traditional work of Clerks as provided by the Agreement.

(c) The provisions of (a) above shall become operative effective April 1, 1973.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, on behalf of itself and all longshore and clerks locals in California, Oregon and Washington:

/s/ Wm. T. Ward

Dated: February 24, 1973

PACIFIC MARITIME ASSOCIATION
on behalf of its members:

/s/ B. H. Goodenough

EXHIBIT C—Memo. of Understanding—June 24, 1973

MEMORANDUM OF UNDERSTANDING

between

PACIFIC MARITIME ASSOCIATION

and

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION

Dated June 24, 1973

INDEX

MEMORANDUM OF UNDERSTANDING

Between

PACIFIC MARITIME ASSOCIATION
(For the Employers)

and

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION

(For and on behalf of itself and each of its longshore locals and clerks locals in California, Oregon and Washington)

THE PARTIES HERETO AGREE AS FOLLOWS:

I. MEMORANDUM OF UNDERSTANDING. This Memorandum of Understanding dated June 24, 1973 includes those items agreed to by the parties in the Memorandum of Understanding dated June 9, 1973 and also covers those items agreed to by the parties subsequent to June 9, 1973.

II. AGREEMENT. The 1966-1971 Pacific Coast Longshore and Clerks' Agreement and the CFS Supplement, as amended, are hereby re-executed and further amended as provided in this "Memorandum of Understanding".

III. WAGES.

Longshore

The basic straight time hourly rate for men paid on a six (6) hour day basis shall be increased by forty cents (40¢) per hour effective 8:00 A.M. on June 30, 1973. This brings the basic straight time rate to $5.50 per hour and the overtime rate to $8.25 per hour.

The basic straight time hourly rate for men paid on a six (6) hour day basis shall be increased by thirty cents (30¢) per hour effective 8:00 A.M. on June 29, 1974. This brings the basic straight time rate to $5.80 per hour and the overtime rate to $8.70 per hour.

For special categories of longshoremen historically paid on an eight (8) hour straight time basis, the straight time hourly rate shall be increased as follows:

Effective 8:00 A.M., June 30, 1973*—$.45
Effective 8:00 A.M., June 29, 1974 —$.34

Clerks

Effective 8:00 A.M. on June 30, 1973* the straight time hourly rate for clerks will be $6.19 and the overtime rate will be $9.285; the straight time hourly rate for (clerk) supervisors will be $6.805 and the overtime rate will be $10.21; the straight time rate for (clerk) chief supervisors and supercargoes will be $7.545 and the overtime rate will be $11.32.

Effective 8:00 A.M. on June 29, 1974 the straight time hourly rate for clerks will be $6.525 and the overtime rate will be $9.79; the straight time hourly rate for (clerk) supervisors will be $7.18 and the overtime rate will be $10.77; the straight time rate for (clerk) chief supervisors and supercargoes will be $7.95 and the overtime rate will be $11.925.

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* For longshoremen: Twenty-five cents (25¢) of the forty cents (40¢) will be payable effective June 2, 1973, if approved by the Cost of Living Council. For longshoremen on an 8 hour basis and for clerks appropriate amounts based on the 25¢ will be payable effective June 2, 1973 if approved by the Cost of Living Council.

Cost of Living Allowance

1. A cost of Living Allowance (COLA) shall become effective at the commencement of the first payroll week beginning after January 1, 1975. A further COLA shall become effective at the commencement of the first payroll week beginning after July 1, 1975.
2. The COLA shall be determined on the basis of changes in the Consumer Price Index, U.S. Average, All Items (1967=100) as published by the Bureau of Labor Statistics, U.S. Department of Labor. (CPI).
3. The COLA which becomes effective at the commencement of the first payroll week beginning after

January 1, 1975, shall be $.01 (one cent) per hour for longshoremen (and $.01125 per hour for clerks) for each full .3 (three tenths) of point increase in the CPI for November 1974 over the CPI for May 1974. The maximum COLA payable for this period shall be $.12 per straight time hour for longshoremen and $.135 per straight time hour for clerks.

4. The COLA which becomes effective at the commencement of the first payroll week beginning after July 1, 1975 shall be $.01 (one cent) per hour for longshoremen (and $.01125 per hour for clerks) for each full .3 (three tenths) of point increase in the CPI for May 1975 over the CPI for November, 1974. The maximum COLA payable for this period shall be $.10 per straight time hour for longshoremen and $.1125 per straight time hour for clerks. This COLA shall be in addition to the COLA provided in paragraph 3 above.
5. The COLA payable in accordance with paragraphs 3 and 4 are as follows:

Difference in the Designated CPI	Cost of Living Allowance Effective with Designated Payroll Week	
	L/S	Clerk
.3- .5	$.01 per hour	$.01125 per hour
.6- .8	.02	.0225
.9-1.1	.03	.03375
1.2-1.4	.04	.045
1.5-1.7	.05	.05625
1.8-2.0	.06	.0675
2.1-2.3	.07	.07875 per hour
2.4-2.6	.08	.09
2.7-2.9	.09	.10125
3.0-3.2	.10	.1125
3.3-3.5	.11	.12375
3.6-3.8	.12	.135

6. The COLA payable in accordance with paragraphs 3 and 4 above shall be payable weekly. The COLA shall be deemed part of the basic longshore and clerk pay rates, shall not be used when computing wage rates based on the basic longshore and clerk wage rates, but shall be considered an "add on" to longshore and clerk pay. The COLA shall be used to compute overtime, vacation, holiday, and Pay Guarantee Plan pay. COLA's will not be paid for travel time hours. The COLA will not be increased by the clerk supervisor's, the clerk chief supervisor's, the supercargo's, or other workers classification differentials.

IV. PAY GUARANTEE PLAN

This Pay Guarantee Plan continues, with modifications herein, the Pay Guarantee Plan provided in the Agreement of February 10, 1972. The provisions of this revised Pay Guarantee Plan as set forth below shall become effective 8:00 A.M. June 30, 1973.

Preamble

The basic intention of the Pay Guarantee Plan is to provide a weekly income to eligible registered longshoremen and clerks.

1. For each year of the contract the Employers will make available for the Pay Guarantee Plan a Fund of $6,000,000. One Fifty Second (1/52) of the amount will be available at the end of each payroll week ($115,385 per week). Pay Guarantee Plan benefits shall be a maximum of 36 hours for A men and a maximum of 18 hours for B men, at the basic straight time rate, except that the Pay Guarantee Plan benefits for B men will be increased to a maximum of 24 hours if, as provided in paragraph 6, circumstances allow.

2. A Pay Guarantee Plan eligibility list shall be prepared. Any man who worked one or more hours during the fifty-two week period ending 8 A.M. May 26, 1973, will be included on the original Pay Guarantee Plan eligibility list. A man who is not on the original Pay Guarantee eligibility list will be added to the list on the July 1st or January 1st that he becomes entitled to Welfare Fund coverage.

Steady men will be removed from Pay Guarantee Plan eligibility when they are employed steady, and the individual employer of steady men shall notify the PMA Area Offices to remove its steady men from Pay Guarantee Plan eligibility commencing the date of employment. Men who have attained age 62 and have 25 years of service and are eligible for Pension benefits shall be excluded from the Pay Guarantee Plan eligibility list.

3. A man who is on the eligibility list will be eligible for Pay Guarantee Plan benefits for any week in which he was available for work on the five days, Monday through Friday inclusive, and failure to meet this availability requirement shall disqualify the employee from participation in Pay Guarantee Plan benefits for the week in which the failure occurs. The Union agrees that it has an obligation under the Agreement to provide the Employers with the required work force on Saturdays and Sundays. (Part time union officers and part time joint employees shall have their union and joint employment hours and earnings integrated with their regular employment earnings and "availability" to determine eligibility for Pay Guarantee benefits.)

4. At the close of each payroll week the Joint Chief Dispatcher shall furnish PMA the joint records of all men available but not dispatched, and those who flopped, for each day of the payroll week. PMA shall use a combination of days on the job plus "availability" in the joint hall to determine eligibility and calculate Pay Guarantee Plan payments.

When calculating a man's regular weekly Pay Guarantee Plan (PGP) payment, the PGP benefit is 36 hours pay at the longshore straight time rate

for A men and 18 hours pay at the longshore straight time rate for B men. If a man's earnings for a week are less than his PGP benefit, he will be paid the difference between his earnings (as defined in the rules) and the benefit. After the third week of the PGP, if his earnings for the current four week period are less than PGP benefits for the four week period, he will be paid the difference between his earnings for the four weeks and PGP benefits for four weeks. If in any of the four weeks his earnings were less than the benefit amount and he did not get a PGP payment because he was ineligible that week, his PGP payment for the four week period will be calculated as if his earnings for that week were equal to the PGP benefit.

Pay Guarantee payments will be adjusted in accordance with paragraph 5(b) when that paragraph applies. PMA then shall furnish to the local union a list of men showing their hours worked, their earnings, their "availability" and the amount of Pay Guarantee Plan payments for which a man is eligible before the adjustment if any, the amount of the adjustment, and the net payment after adjustment.

5. (a) If the total payments do not exceed the weekly $115,385, PMA will prepare checks for payment and such checks will be available for distribution in accordance with the rules.

   (b) If the total Pay Guarantee Plan payments exceed $115,385, an across-the-board percentage reduction will be made to reduce the total figure to $115,385.

6. If during the first 13 payroll weeks there are weeks in which the amount paid out for Pay Guarantee Plan purposes is less than the $115,385, any excess monies for those payroll weeks will be retained in the Fund until the end of the first 13 week period of the contract, at which time a review of total payments will be made. Any such excess

monies will be used to make a lump sum payment to any registered man who, during the first 13 week period, had his weekly Pay Guarantee Plan benefit reduced under the provisions of 5(b) above. Such lump sum payments in the aggregate shall not be in an amount to make the total cost of the Pay Guarantee Plan for the first 13 week period exceed the total amount of 13 times $115,385.

A lump sum or "make whole" payment to a man from such excess monies shall be the difference between his Guarantee payments for the 13 week period and the amount he would have been entitled to if there had been no reduction under paragraph 5(b). If the total of such "make whole" payments would exceed the excess money, such "make whole" payments will be reduced by an across-the-board percentage reduction so that no more than the total excess monies are paid out.

If there is money left over after the "make whole" payments have been made, B men will be paid up to an additional 6 hours at the basic straight time rate for each week in which they were entitled to a Pay Guarantee Plan payment. If the total of such payments would exceed the money left over, such additional payments will be reduced by an across-the-board percentage reduction so that no more is paid out during the 13 week period than 13 times $115,385.

7. The procedures described in the preceding paragraphs shall apply in like manner to the succeeding 13 week periods of the agreement. Any amount left unused in a preceding 13 week period shall be carried over to the end of the following period and used for "make whole" payments for that period. At the end of the fourth 13 week period, if there is an excess left after "make whole" payments have been made for that period, such excess will be used to "make whole" any men who were not "made whole" in prior periods.

8. No registered man shall be eligible for Pay Guarantee Plan payments for more than 52 payroll weeks per payroll year minus the number of weeks of vacation for which he is paid in that year.

9. A man may count all Pay Guarantee Plan hours for which he is eligible for payment toward his Welfare Plan and Pension Plan eligibility. A man's Pay Guarantee Plan hours will be calculated at the end of each 13 week period by dividing the Pay Guarantee Plan payments for which he is eligible for the period by the basic straight time rate.

10. A work stoppage by any Local(s) in violation of Section 11.1 of the PCL&CD shall disqualify all registered men in the port(s) affected from payment under this Plan in the payroll week that the violation occurs. In each week a coastwise work stoppage occurs, the Employers' obligation for $6,000,000 will be reduced by the $115,385 which was to be available for that payroll week.

11. In the event that unions other than those signatory to the PCL&CD have work stoppages or there occurs an Act of God (described herein as "force majeure") that creates a need to provide Pay Guarantee payments in a port, area, or on a coastwise basis, for a period extending beyond one payroll week, Pay Guarantee Plan payments will be suspended in the port, area, or coastwise, as applicable, until work can be resumed. There shall be no reduction in the Employers' liability for the Pay Guarantee Plan Fund as a result of such incidents.

12. The Employers will determine the method by which the $6,000,000 per year will be collected and made available at the rate of $115,385 per payroll week.

13. Disputes arising over the interpretation or application of the terms of the Pay Guarantee Plan shall be processed through the contract grievance machinery.

V. HOLIDAYS

Delete "Section 5—Holidays" of the Pacific Coast Longshore & Clerks Agreement in its entirety and substitute the following:

"SECTION 5—HOLIDAYS

"5.1 The following holidays shall be recognized: New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Statewide Election Day, Christmas Day, or any other legal holiday that may be proclaimed by state or national authority.

"5.2 Holiday observance and work schedule. The observance of holidays and the work schedule on the holidays listed in section 5.1 shall be as follows in all U.S. Pacific Coast ports:

New Year's Day	
January 1	—Work shall be on a voluntary basis from 3:00 P.M. December 31st until 7:00 A.M. January 2nd. *Exception*: An extended shift will be worked from 3:00 P.M. to 5:00 P.M. on December 31st for the purpose of finishing a ship.
Lincoln's Birthday	
February 12	—Normal work day.
Washington's Birthday	
3rd Monday in February	—Normal work day.
Memorial Day	
Last Monday in May	—Normal work day.
Independence Day	
July 4	—Normal work day.
Labor Day	
1st Monday in September	—Normal work day.
Columbus Day	
2nd Monday in October	—Normal work day.

Veterans' Day	
4th Monday in October	—Normal work day.
Statewide Election Day	
as proclaimed	—Normal work day.
Thanksgiving Day	
4th Thursday in November	—Normal work day.
Christmas Day	
December 25	—Work shall be on a voluntary basis from 3:00 P.M. December 24th until 7:00 A.M. December 26th. *Exception*: An extended shift will be worked from 3:00 P.M. to 5.00 P.M. on December 24th for the purpose of finishing a ship.
Any Other Legal Holiday	
As proclaimed by state or national authority	—Normal work day.

"5.21 When a holiday falls on Sunday, the work schedule provided in Section 5.2 shall apply on Sunday; however, the holiday shall be observed on Monday and payment as provided in Sections 5.32, 5.321 and 5.322 shall apply to Monday.

"5.22 On Election Day the work shall be arranged so as to enable the men to vote.

"5.23 Where work ceases at 3:00 P.M. (December 24th and December 31st) the day shift guarantee shall be 6 hours on an 8:00 A.M. start and 5 hours on a 9:00 A.M. start.

"5.24 Any work schedule restriction provided in Section 5.2 shall not apply in the event of an emergency involving the safety of vessel, life or property.

"5.3 Paid holidays. The following holidays shall be recognized as 'paid holidays', effective July 1, 1973: Christmas Day and New Year's Day. The following holidays shall be recognized as 'paid holidays', effective July 1, 1974: Independence Day, Labor Day and Thanksgiving Day.

"5.31 Eligibility for paid holidays. Only registered employees are entitled to receive a 'paid holiday', provided:

"5.311 They have registration status on the date of the 'paid holiday', and

"5.312 Have worked 800 hours in the prior payroll year or the most recent payroll year during which there was sufficient work opportunity in their port of registration to have done so.

"5.313 In addition to 5.311 and 5.312, employees receiving their job assignments through the dispatch hall must meet the availability requirement of the Pay Guarantee Plan for at least two of the five days, Monday through Friday, (exclusive of the holiday) during the payroll week in which the holiday falls.

"5.314 In addition to 5.311 and 5.312, employees working on a steady basis must meet the availability requirement of their employer.

"5.315 The availability provision of 5.313 or 5.314 shall not apply to absence while on vacation or because of sickness or injury which is verified.

"5.32 Payment. Registered employees eligible for a 'paid holiday' shall receive eight (8) hours at the basic longshore (or clerk) straight time rate of pay.

"5.321 Registered employees eligible for a 'paid holiday' shall receive payment as provided in 5.32 above, whether they work or not. When registered employees who are eligible for a 'paid holiday' perform work on such holiday, their additional payment for working shall be as prescribed in Section 6.

"5.322 Registered employees not eligible for a 'paid holiday' and non-registered employees who perform work on any of the paid holidays listed in 5.3 above shall be paid for working as prescribed in Section 6.

"5.33 Disbursement. Payment for each 'paid holiday' shall be made on that pay day which is the regular pay day for disbursing payroll checks for the payroll week in which the 'paid holiday' falls. The Pacific Maritime Association shall be the disbursing agent for such payments.

"5.34 Work force availability. The Union agrees that employees shall be available to meet the Employers' work requirements on all holidays in accordance with the work schedule contained in 5.2."

VI. PENSIONS

a) For men 59-65 with 13-24 years of service, add provision for pension payable upon leaving industry and actuarially discounted from age 65, plus welfare coverage and widow's benefit of ½ the actuarially discounted pension. (Effective 7/1/73.)

b) For men 55-61 with 25 years of service, provide the present deferred pension payable at normal retirement age of 62 rather than 65, and for men 55-58, pension payable on leaving the industry be actuarially discounted from age 62 rather than 65. (Effective 7/1/73.)

c) For men 55-59 with 13-24 years of service, provide pension payable upon leaving industry, actuarially discounted from 65, and a widow's benefit of ½ the actuarially discounted pension. (Effective 7/1/73.)

d) Extend present widow's benefit for non-retired man with 25 years of service to age 59. (Effective 7/1/74.)

VII. WELFARE

1. *Dental*

A. The present dental plan provides benefits equal to 95% of the schedule of amounts for each procedure. The benefit is to be improved to 100% of that schedule. (Effective 7/1/73.)

B. The present children's dental program of 100% of the cost of covered services applies to dependent children up to age 15. The coverage will be extended to all dependent children to age 19. (Effective 7/1/73.)

C. Orthodontia services will be provided on a 50% co-insurance basis up to a maximum of $500.00; that is, the plan would pay one-half of the first $1,000 of orthodontia cost per individual. (Effective 7/1/73.)

2. Vision care through a plan providing an annual eye examination, annual lenses if prescription changes, and frames every other year. These would be available through a panel of optometrists and the plan requires a

$5.00 payment by the employee for each examination. (Effective 7/1/74.)

3. In those ports where the employee has an option to choose hospital-medical coverage using either Kaiser type medical plans or an insurance program, the insurance program would be improved so that the out-of-pocket cost to the employee would be reduced to the same proportionate level as in existence at the inception of the plan. (Effective 7/1/73.)

4. Kidney Dialysis—To provide kidney dialysis in the home or non-hospital treatment center during the first two months prior to Medicare picking up the cost and for those individuals not entitled to Medicare coverage. (Effective 7/1/74.)

5. The following changes in eligibility for welfare will be included:

A. Eligibility for dependent children varies from program to program and would be standardized at full welfare coverage from birth to age 19 (age 21 in Portland under the Kaiser Program) and thereafter to age 23 for dependent children who are full-time students. (Effective 7/1/73.)

B. Incapacitated dependent children will continue to have eligibility beyond the age limits while they are incapacitated. (Effective 7/1/73.)

C. Upon the death of an active man, welfare coverage for his widow and dependent children would continue for one year, with provision to continue coverage thereafter at her own expense. (Effective 7/1/74.)

VIII. VACATIONS.

a) Applicable to Longshore only: Substitute 7.25, 7.251 and 7.252 of the Clerks Contract Document for the present Section 7.25 in the Longshore Contract Document. (Effective 7/1/73.)

b) Applicable to Longshore & Clerks: Effective July 1, 1974 provide a maximum of four weeks vacation after seventeen years, and a maximum of five weeks

vacation after twenty-three years (applicable to vacation qualification in 1974, payable in 1975).

c) Applicable to Longshore & Clerks: Effective July 1, 1974 reduce the two week basic vacation requirement of 1344 hours to 1300 hours (applicable to vacation qualification in 1974, payable in 1975).

d) Applicable to Longshore only: Effective July 1, 1974 reduce the 1600 hours requirement in 7.14 to 1500 hours (applicable to vacation qualification in 1974, payable in 1975).

e) Applicable to Longshore & Clerks: Change Section 7.42 to provide for the distribution of vacation checks in the first week in April (applicable to vacations earned during the calendar year 1973, payable in 1974).

IX. ILWU-PMA NONMEMBER PARTICIPATION AGREEMENT

The "ILWU-PMA Nonmember Participation Agreement" is revised as follows:

ILWU-PMA NONMEMBER PARTICIPATION AGREEMENT

The PMA-ILWU jointly registered work force (hereinafter referred to as the "joint work force") exists as a result of the registration process beginning in 1935 under successive Pacific Coast Longshore and Clerks Agreements (herein called "PCLCA") and the Walking Bosses and Foremen's Agreement. These agreements have been between the Pacific Maritime Association and its predecessors (PMA) and the International Longshoremen's and Warehousemen's Union and its longshore, clerks and walking bosses/foremen's locals in California, Oregon and Washington (ILWU). The men in the joint work force have "jobs" in which they work on an interchangeable basis for the many business entities involved in or related to the movement of cargo to and from ships in California, Oregon and Washington. Some of these business entities are not members of PMA. The following provisions apply to such nonmembers of PMA.

1. A business entity not a member of PMA must participate in this ILWU-PMA Nonmember Participation Agreement if it uses men in the joint work force.

2. The nonmember participant's separate ILWU contract must conform with the provisions hereof, and the provisions of the PCLCA governing the selection of men for inclusion in the joint work force.

3. A nonmember participant will share in the use of the joint work force upon the same terms as apply to members of PMA. For example a) the nonmember participant shall obtain men on the same basis as a PMA member from the dispatch hall operated by ILWU and PMA through the allocation system operated by PMA.

b) if a work stoppage by ILWU shuts off the dispatch of men from the dispatch hall to PMA members, nonmember participants shall not obtain men from the dispatch hall,

c) if during a work stoppage by ILWU, PMA and ILWU agree on limited dispatch of men from the dispatch hall for PMA members, such limited dispatch shall be available to nonmember participants.

The essence of b) and c) of this section is the acceptance by nonmember participants of the principle that a work stoppage by ILWU against PMA members is a work stoppage against nonmember participants.

4. Should any nonmember participant cease to have the right to obtain men through the allocation and dispatching system, such nonmember shall nevertheless continue under a duty to meet all of its obligations based upon its use of the joint work force including accrued obligations for PMA assessments and dues, obligations for retroactive and current assessments for fringe benefits, obligations to meet liabilities under paragraph 10 hereof, and all other obligations with respect to the pay of workers paid through the central pay office during the period of its participation in the use of the joint work force.

5. A nonmember participant may obtain and employ a man in the joint work force on a steady basis in the same way a member may do so. When such participant

employs a man to work on a steady basis, it shall notify PMA immediately. On request from PMA, each such participant shall furnish to PMA a list of men it is using on a steady basis. Steady men shall participate in the Pay Guarantee Plan in accordance with the rules that are adopted by PMA and ILWU.

6. For purposes of 1.53 through 1.57 of the Container Freight Station Supplement (CFSS) of the PCLCA, a nonmember participant who uses the joint work force at terms and conditions of employment no more favorable to the nonmember participant than those provided under the PCLCA, including the CFSS, may be deemed to be a "member of PMA" insofar as it is so using the joint work force.

7. The nonmember participant shall participate in the ILWU-PMA Pension Plan, the ILWU-PMA Welfare Plan, the PMA Vacation Plans (longshoremen and clerks, and walking bosses/foremen) and the ILWU-PMA Guarantee Plans (longshoremen and clerks/ and walking bosses/foremen) in accordance with the terms applicable to such participation. Such nonmember shall make payments into these Plans at the same rates and at the same times as members of PMA are to make the respective payments. Attached are statements of terms and conditions currently in effect with respect to such participation. Nonmember Participants shall be subject to the same audits as members of PMA.

8. The nonmember participant shall use the PMA central pay system and central records office and must sign the standard forms of participation documents for the central records office and central pay system. Amounts due with respect to the central pay and central records system shall be paid to PMA at the time and in the manner prescribed for members of PMA.

Note: The hours for which pay is distributed through the central pay office to any man within the joint work force, with respect to his being used by such nonmember pursuant to the terms hereof, shall be deemed hours of work for a PMA member company for purposes of determining the individual longshoremen's eligibility for vacations, welfare, pensions, pay guarantee, promotion,

transfer, advancement in registered status, seniority, and all other aspects of his work history as a member of the joint work force.

9. Each nonmember participant shall pay to the PMA an amount equal to the dues and assessments on the same basis that a PMA member would pay. Payments shall be made at the same time the member would pay.

10. If a nonmember participant becomes delinquent under paragraphs 7, 8, or 9 hereof no joint work force workers shall be furnished to the delinquent nonmember.

11. It is believed that all provisions of this agreement are now lawful, and it is assumed that they will continue to be lawful. Should there at any time be a determination that any portion of this agreement is contrary to law, the remaining provisions shall continue to be binding upon the parties unless ILWU or PMA gives notice of the termination of this entire agreement.

12. The ILWU-PMA Nonmember Participation Agreement shall be binding and continue in effect until terminated on such terms and conditions as may be mutually agreed to by the PMA, the ILWU and the participant. An entity that terminates its participation shall at such time no longer be eligible to employ men in the joint work force nor to participate in the Pension, Welfare,

Vacation and Pay Guarantee Plans existing between ILWU and PMA.

Agreed to by:

_____

(Participant)

By _____

Approved by
INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, on behalf of itself and all longshore and clerks locals in California, Oregon and Washington

_____

Dated: _____

Approved by
PACIFIC MARITIME ASSOCIATION
on behalf of its members

_____

X. REGISTRATION

A. *No Lay-Offs*

There shall be no reduction in registered longshoremen or clerks work force during the term of the Agreement except for normal attrition due to quits, deaths and retirements, and deregistration for cause. This does not preclude the parties from agreeing upon a reduction in force should unusual circumstances develop.

B. *Promotion of B Men*

(1) The "freeze" on promotions from Class B to Class A registration is lifted.

(2) Coast Referrals now pending on promotions from B to A are hereby approved effective July 1, 1973.

(3) Subject to the ultimate control of the parties at the Coast level, local Joint Port Labor Relations Committees may submit requests for promotions from B to A on an orderly basis.

(4) In those ports on July 1, 1973, established to be low work opportunity ports (average hours less than 18 for A men and less than 9 for B men), the parties agree to expedite work force adjustment procedures which may include all or any of the procedures labelled a) b) and c) following:

In those ports with an excess of A and/or B men, but with the excess not in sufficient numbers with the present workload to place the port for either or both categories in the low work opportunity port category (average hours less than 18 hours for A men—less than 9 for B men) the parties agree to

a) offer men on some seniority basis an opportunity to transfer to ports where extra men are needed, and subject to approval of the local which may need men;

b) provide that on an attrition basis, B men will be promoted to A; and

c) request the local parties to submit a plan to the Coast level for the promotion of remaining B men on an orderly basis over a period which could extend beyond the two year contract period.

(5) Local 19 "B" registered Phase 1 linehandlers shall be advanced to A status. Those linehandlers so advanced who are unable to pass longshore physical examinations shall be frozen on their linehandler job while such exists or until they leave the industry.

XI. GRIEVANCE MACHINERY

a) Amend Section 17.283 of the Pacific Coast Longshore & Clerks Agreement by adding a final sentence as follows:

"Either party may request that

"a) grievances arising under 17.7 or involving dispatch hall disputes (except those covered by item 9(b) of the Supplemental Memorandum of Understanding dated June 20, 1972) be processed initially and from step to step within twenty-four (24) hours; and

"b) failures to observe area arbitrators' awards be processed to the next step within twenty-four (24) hours."

b) Amend Section 17.54 of the Pacific Coast Longshore & Clerks Agreement as follows:

"17.54 In the event the parties agree that an arbitrator has exceeded his authority and jurisdiction or that he is involved in the industry in any other position of interest which is in conflict with his authority and jurisdiction, he shall be disqualified for any further service."

XII. CLERKS CONTRACT COVERAGE

1. Amend section 1.11 of the Clerks Contract Document to read as follows:

"1.11 This Contract Document covers clerks' work with respect to the movement of outbound cargo only from the time it enters a dock and comes under the control of any terminal, stevedore, agent or vessel operator covered by this Contract Document and covers movement of inbound cargo only so long as it is at a dock and under the control of any vessel operator, agent, stevedore, or terminal covered by this Contract Document.

2. Delete section 1.2541 from the Clerks Contract Document.

XIII. SKILL RATES

Amend the Longshore Contract Document to include a new section 6.351 as follows:

"6.351 When new power equipment is introduced, the Employer at the Coast level shall submit to the Union a letter describing the equipment and the proposed skill rate prior to the anticipated use of such equipment. A copy of the letter shall be transmitted to the local(s) in the port(s) where the new equipment is to be introduced. After such notification, the following procedure shall be implemented.

a) The Joint Port Labor Relations Committee in the port where the new power equipment is introduced shall meet promptly and reach agreement or disagreement on the Employers' proposed skill rate at least 48 hours prior to the anticipated use of the new equipment. If agreement is reached on the Employees' proposal, such skill rate shall be a rate in Section 6.33.

b) If the Joint Port Labor Relations Committee under step a) above does not reach agreement on the skill rate proposed by the Employers, the matter shall be immediately referred to the Area Arbitrator for resolution. The Area Arbitrator shall issue a prompt interim decision on the skill rate to be paid for the initial use of the equipment.

c) On the initial working shift of the equipment, either party at the local level may request a Joint Port Labor Relations Committee meeting to observe the equipment in use as established by either step a) or b) above. If either party is dissatisfied with the skilled rate, the Area Arbitrator shall be promptly called to the job. The Area Arbitrator shall observe the operation with the local parties, hear their contentions, and then issue a prompt formal decision on the skilled rate that shall be final and binding, unless changed under step d) below.

d) Either party may appeal a decision by the Area Arbitrator under step c) above to the Joint Coast Labor Relations Committee. Upon receipt of an appeal, the Joint Coast Labor Relations Committee shall meet, within five (5) days, or later, if the parties agree on a subsequent meeting date. If agreement is not reached by the Joint Coast Labor Relations Committee, the matter shall be placed before the Coast Arbitrator whose decision on the skilled rate shall be final and binding."

XIV. SCHEDULED DAYS OFF

a) Amend section 4.1 of the Longshore Contract Document to read as follows:

"4.1 Each registered longshoreman shall be entitled to two full days (48 hours) off each payroll week."

b) Delete section 4 of the Clerks Contract Document in its entirety and substitute the following:

"4.1 Each registered clerk, other than monthly and preferred, shall be entitled to two full days (48 hours) off each payroll week.

"4.11 The Joint Port Labor Relations Committee shall fix, arrange, direct, and schedule days off in advance in accordance with the above to the extent possible considering needs of the port and men available.

"4.2 Each monthly and preferred clerk shall be entitled to two full days (48 hours) off each payroll week, as agreed between himself and his employer."

XV. HEALTH AND SAFETY & PENALTY CARGO

a) The Parties agree to refer to a joint subcommittee the task of updating the existing Pacific Coast Marine Safety Code and the Penalty Cargo List, with a six-month time limit after the new Agreement becomes effective to accomplish their assignment. The penalty cargo rates shall not be subject to change.

b) Amend section 11.41 of the Pacific Coast Longshore and Clerks' Agreement to read as follows:

"11.41 Longshoremen (Clerks) shall not be required to work work when in good faith they believe that to do so is to immediately endanger health and safety. Only in cases of bona fide health and safety issues may a standby be justified. The union pledges in good faith that health and safety will not be used as a gimmick.

The employer shall have the option of having the men who raise a question of health and safety stand by until a decision is reached or "working around" the situation until it can be resolved, and no further work shall be performed on that disputed operation until the health and safety issue is resolved. Supplement III sets forth the agreed procedures with respect to disputes on health and safety."

XVI. MEDIATION/ARBITRATION

Pursuant to the Mediation/Arbitration Process clause of the June 9, 1973 Memorandum of Understanding between the parties, the following subjects are being submitted to Sam Kagel for arbitration:

1) Traveling men and gangs;
2) Moving expenses of men transferred from distressed ports;
3) Penalty pay for the tenth hour on an extended shift; and
4) Damaged cargo rate.

In addition, the "Jurisdiction-LASH" issue is still in negotiations and may also be arbitrated.

The parties agree that the Arbitrator is not bound to issue his Decisions by the June 30, 1973 date as specified in the June 9, 1973 Memorandum of Understanding.

XVII. RATIFICATION

This Memorandum of Understanding is subject to ratification by both parties.

XVIII. GOVERNMENTAL AGENCIES APPROVALS

Pension, Welfare and Pay Guarantee Plans are all subject to and conditional upon receipt of satisfactory tax rulings from appropriate Federal and state agencies. If unsatisfactory rulings are received, the parties will meet to make required changes in the Plan(s) to comply with the rulings.

XV. TERM OF AGREEMENT

Amend Section 20.1 of the PCL&CA by changing the termination date to 8:00 A.M. July 1, 1975.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, on behalf of itself and all longshore and clerks locals in California, Oregon and Washington:

/s/ Harry Bridges

Dated: June 24, 1973

PACIFIC MARITIME ASSOCIATION
on behalf of its members:

/s/ Ed J. Flynn

EXHIBIT B—Memo. of Understanding—June 9, 1973

MEMORANDUM OF UNDERSTANDING

Between

PACIFIC MARITIME ASSOCIATION
(For the Employees)

and

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION

(For and on behalf of itself and each of its longshore locals and clerks locals in California, Oregon and Washington)

The 1966-1971 Pacific Coast Longshore and Clerks' Agreement, as amended, shall be re-executed and further amended as follows:

APPLICABLE
TO
LONGSHORE AND CLERKS

I. WAGES

Longshore

The basic straight time hourly rate for men paid on a six (6) hour day basis shall be increased by forty cents (40¢) per hour effective 8:00 a.m. on June 30, 1973.* This brings the basic straight time rate to $5.50 per hour and the overtime rate to $8.25 per hour.

The basic straight time hourly rate for men paid on a six (6) hour day basis shall be increased by thirty cents (30¢) per hour effective 8:00 a.m. on June 29, 1974. This brings the basic straight time rate to $5.80 per hour and the overtime rate to $8.70 per hour.

For special categories of longshoremen historically paid on an eight (8) hour straight time basis, the straight time hourly rate shall be increased as follows:

Effective 8:00 a.m., June 30, 1973 *—$ .45
Effective 8:00 a.m. June 29, 1974 —$ .34

Clerks

Effective 8:00 a.m. on June 30, 1973 * the straight time hourly rate for clerks will be $6.19 and the overtime rate will be $9.285 the straight time hourly rate for (clerk) supervisors will be $6.805 and the overtime rate will be $10.21 the straight time rate for (clerk) chief supervisors and supercargoes will be $7.545 and the overtime rate will be $11.32.

Effective 8:00 a.m. on June 29, 1974 the straight time hourly rate for clerks will be $6.525 and the overtime rate will be $9.79 the straight time hourly rate for (clerk) supervisors will be $7.18 and the overtime rate will be $10.77 the straight time rate for (clerk) chief supervisors and supercargoes will be $7.95 and the overtime rate will be $11.925.

Cost of Living Increases

Effective January 1, 1975, 1¢ for each full .3 increase in Consumer Price Index with a 12¢ maximum based on CPI movement from May 1, 1974 to October 31, 1974.

Effective July 1, 1975, 1¢ for each full .3 increase in Consumer Price Index with a 10¢ maximum based on CPI movement from November 1, 1974 to April 30, 1975.

Increases not part of base rate, but used to compute Overtime, Vacations, Holidays, and Pay Guarantee Plan payments.

[Full Cost of Living clause to be drafted.]

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* For longshoremen: Twenty-five cents (25¢) of the forty cents (40¢) will be payable effective June 2, 1973, if approved by the Cost of Living Council. For longshoremen on an 8 hour basis and for clerks appropriate amounts based on the 25¢ will be payable effective June 2, 1973 if approved by the Cost of Living Council.

II. PAY GUARANTEE PLAN

Preamble

The basic intention of the Pay Guarantee Plan is to provide a weekly income to eligible registered longshoremen and clerks.

1. For each year of the contract the Employers will make available for the Pay Guarantee Plan a Fund of $6,000,000. One Fifty Second (1/52) of the amount will be available at the end of each payroll week ($115,385 per week). Pay Guarantee Plan benefits shall be a maximum of 36 hours for A men and a maximum of 18 hours for B men, at the basic straight time rate, except that the Pay Guarantee Plan benefits for B men will be increased to a maximum of 24 hours if, as provided in paragraph 6, circumstances allow.

2. A Pay Guarantee Plan eligibility list shall be prepared. Any man who worked one or more hours during the fifty-two week period ending 8 A.M. May 26, 1973, will be included on the original Pay Guarantee Plan eligibility list. A man who is not on the original Pay Guarantee eligibility list will be added to the list on the July 1st or January 1st that he becomes entitled to Welfare Fund coverage.

   Steady men will be removed from Pay Guarantee Plan eligibility when they are employed steady, and the individual employer of steady men shall notify the PMA Area Offices to remove its steadymen from Pay Guarantee Plan eligibility commencing the date of employment. Men who have attained age 62 and have 25 years of service and are eligible for Pension benefits shall be excluded from the Pay Guarantee Plan eligibility list. (The Union will submit rules regarding these matters and others noted below.*)

3. A man who is on the eligibility list will be eligible for Pay Guarantee Plan benefits for any week in

which he was available for work on the five days, Monday through Friday inclusive, and failure to meet this availability requirement shall disqualify the employee from participation in Pay Guarantee Plan benefits for the week in which the failure occurs. The Union agrees that it has an obligation under the Agreement to provide the Employers with the required work force on Saturdays and Sundays. (Part time union officers and part time joint employees shall have their union and joint employment hours and earnings integrated with their regular employment earnings and "availability" to determine eligibility for Pay Guarantee benefits.)

4. At the close of each payroll week the Joint Chief Dispatcher shall furnish PMA the joint records of all men available but not dispatched, and those who flopped, for each day of the payroll week. PMA shall use a combination of days on the job plus "availability" in the joint hall to determine eligibility and calculate Pay Guarantee Plan payments.

   A man's Pay Guarantee Plan payment is the difference between the Pay Guarantee Plan benefit (36 hours for A men and 18 hours for B men) and the man's weekly earnings. (Rules *) Pay Guarantee Plan payments will be adjusted in accordance with paragraph 5(b) when that paragraph applies. PMA then shall furnish to the local union a list of men showing their hours worked, their earnings, their "availability" and the amount of Pay Guarantee Plan payments for which a man is eligible before the adjustment if any, the amount of the adjustment, and the net payment after adjustment.

5. (a) If the total payments do not exceed the weekly $115,385, PMA will prepare checks for payment and such checks will be available for distribution in accordance with the rules.

   (b) If the total Pay Guarantee Plan payments exceed $115,385, an across-the-board percentage

reduction will be made to reduce the total figure to $115,385.

6. If during the first 13 payroll weeks there are weeks in which the amount paid out for Pay Guarantee Plan purposes is less than the $115,385, any excess monies for those payroll weeks will be retained in the Fund until the end of the first 13 week period of the contract, at which time a review of total payments will be made. Any such excess monies will be used to make a lump sum payment to any registered man who, during the first 13 week period, had his weekly Pay Guarantee Plan benefit reduced under the provisions of 5(b) above. Such lump sum payments in the aggregate shall not be in an amount to make the total cost of the Pay Guarantee Plan for the first 13 week period exceed the total amount of 13 times $115,385.

   A lump sum or "make whole" payment to a man from such excess monies shall be the difference between his Guarantee payments for the 13 week period and the amount he would have been entitled to if there had been no reduction under paragraph 5(b). If the total of such "make whole" payments would exceed the excess money, such "make whole" payments will be reduced by an across-the-board percentage reduction so that no more than the total excess monies are paid out.

   If there is money left over after the "make whole" payments have been made, B men will be paid up to an additional 6 hours at the basic straight time rate for each week in which they were entitled to a Pay Guarantee Plan payment. If the total of such payments would exceed the money left over, such additional payments will be reduced by an across-the-board percentage reduction so that no more is paid out during the 13 week period than 13 times $115,385.

7. The procedures described in the preceding paragraphs shall apply in like manner to the succeeding 13 week periods of the agreement. Any amount left

unused in a preceding 13 week period shall be carried over to the end of the following period and used for "make whole" payments for that period. At the end of the fourth 13 week period, if there is an excess left after "make whole" payments have been made for that period, such excess will be used to "make whole" any men who were not "made whole" in prior periods.

8. No registered man shall be eligible for Pay Guarantee Plan payments for more than 52 payroll weeks per payroll year minus the number of weeks of vacation for which he is paid in that year.

9. A man may count all Pay Guarantee Plan hours for which he is eligible for payment toward his Welfare Plan and Pension Plan eligibility. A man's Pay Guarantee Plan hours will be calculated at the end of each 13 week period by dividing the Pay Guarantee Plan payments for which he is eligible for the period by the basic straight time rate.

10. A work stoppage by any Local(s) in violation of Section 11.1 of the PCL&CD shall disqualify all registered men in the port(s) affected from payment under this Plan in the payroll week that the violation occurs. In each week a coastwise work stoppage occurs, the Employers' obligation for $6,000,000 will be reduced by the $115,385 which was to be available for that payroll week.

11. In the event that unions other than those signatory to the PCL&CD have work stoppages or there occurs an Act of God (described herein as "force majeure") that creates a need to provide Pay Guarantee payments in a port, area, or on a coastwise basis, for a period extending beyond one payroll week, Pay Guarantee Plan payments will be suspended in the port, area, or coastwise, as applicable, until work can be resumed. There shall be no reduction in the Employers' liability for the Pay Guarantee Plan Fund as a result of such incidents.

12. The Employers will determine the method by which the $6,000,000 per year will be collected and made available at the rate of $115,385 per payroll week.

13. Disputes arising over the interpretation or application of the terms of the Pay Guarantee Plan shall be processed through the contract grievance machinery.

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*NOTE: Omitted from the preceding paragraphs are several items to which the parties agree to direct their immediate attention including but not limited to the following:

1. Travel Rules.
2. Unemployment Compensation and other earnings.
3. Flopping jobs, walking off job, disciplinary action, dispatched but not reporting.
4. Distressed ports.
5. Eligibility list and benefit plan qualifications.

III. PENSIONS

a) For men 59-65 with 13-24 years of service, add provision for pension payable upon leaving industry and actuarially discounted from age 65, plus welfare coverage and widow's benefit of ½ the actuarially discounted pension. (Effective 7/1/73.)

b) For men 55-61 with 25 years of service, provide the present deferred pension payable at normal retirement age of 62 rather than 65, and for men 55-58, pension payable on leaving the industry be actuarially discounted from age 62 rather than 65. (Effective 7/1/73.)

c) For men 55-59 with 13-24 years of service, provide pension payable upon leaving industry, actuarially discounted from 65, and a widow's benefit of ½ the actuarially discounted pension. (Effective 7/1/73.)

d) Extend present widow's benefit for non-retired man with 25 years of service to age 59. (Effective 7/1/74.)

IV. WELFARE

1. *Dental*

   A. The present dental plan provides benefits equal to 95% of the schedule of amounts for each procedure. The benefit is to be improved to 100% of that schedule. (Effective 7/1/73.)

   B. The present childrens dental program of 100% of the cost of covered services applies to dependent children up to age 15. The coverage will be extended to all dependent children to age 19. (Effective 7/1/73.)

   C. Orthodontia services will be provided on a 50% co-insurance basis up to a maximum of $500.00; that is, the plan would pay one-half of the first $1,000 of orthodontia cost per individual. (Effective 7/1/73.)

2. Vision care through a plan providing an annual eye examination, annual lenses if prescription changes, and frames every other year. These would be available through a panel of optometrists and the plan requires a $5.00 payment by the employee for each examination. (Effective 7/1/74.)

3. In those ports where the employee has an option to choose hospital-medical coverage using either Kaiser type medical plans or an insurance program, the insurance program would be improved so that the out-of-pocket cost to the employee would be reduced to the same proportionate level as in existence at the inception of the plan. (Effective 7/1/73.)

4. Kidney Dialysis—To provide kidney dialysis in the home or non-hospital treatment center during the first two months prior to Medicare picking up the cost and for those individuals not entitled to Medicare coverage. (Effective 7/1/74.)

5. The following changes in eligibility for welfare will be included:

A. Eligibility for dependent children varies from program to program and would be standardized at full welfare coverage from birth to age 19 (age 21 in Portland under the Kaiser Program) and thereafter to age 23 for dependent children who are full-time students. (Effective 7/1/73.)

B. Incapacitated dependent children will continue to have eligibility beyond the age limits while they are incapacitated. (Effective 7/1/73.)

C. Upon the death of an active longshoreman, welfare coverage for his widow and dependent children would continue for one year, with provision to continue coverage thereafter at her own expense. (Effective 7/1/74.)

V. VACATIONS

(A) Applicable to Longshore only: Substitute 7.25, 7.251 and 7.252 of the Clerks Contract Document for the present Section 7.25 in the Longshore Contract Document. (Effective 7/1/73.)

(B) Applicable to Longshore & Clerks: Effective July 1, 1974 provide a maximum of four weeks vacation after seventeen years, and a maximum of five weeks vacation after twenty-three years (applicable to vacation qualification in 1974, payable in 1975).

(C) Applicable to Longshore & Clerks: Effective July 1, 1974 reduce the two week basic vacation requirement of 1344 hours to 1300 hours (applicable to vacation qualification in 1974, payable in 1975).

(D) Applicable to Longshore only: Effective July 1, 1974 reduce the 1600 hours requirement in 7.14 to 1560 hours (applicable to vacation qualification in 1974, payable in 1975).

(E) Applicable to Longshore & Clerks: Change Section 7.42 to provide for the distribution of vacation checks in the first week in April (applicable to vacations earned during the calendar year 1973, payable in 1974).

VI. HOLIDAYS

There shall be paid holidays as follows:

effective July 1, 1973—Christmas Day
New Year's Day

effective July 1, 1974—Labor Day
Thanksgiving Day
Independence Day

On Labor Day, Thanksgiving Day, and Independence Day, a work force shall be available to meet the Employer's needs.

Christmas Day and New Year's Day shall be voluntary work holidays with work on a voluntary basis from 3:00 P.M. the day before the holiday until 7:00 A.M. the day after the holiday. An extended shift will be worked from 3:00 P.M. to 5:00 P.M. the day before the holiday for the purpose of finishing a ship.

To be eligible for holiday pay employees must meet the availability requirements of the Pay Guarantee Plan for at least two of the five days, exclusive of the holiday, Monday through Friday for the week in which the holiday falls. (The Pay Guarantee Plan shall provide that if the holiday falls, or is observed, on Monday through Friday, availability will not be required on that day.) An employee shall not lose holiday pay because of his failure to meet the aforementioned requirement if such failure is due to his being:

1) on vacation,
2) verified sickness or injury.

Steady employees shall meet their weekly or monthly availability requirements to be eligible for holiday pay. Also employees must be registered on the date of the paid holiday to be eligible for holiday pay and have worked 800 hours in the prior calendar year, or the most recent year during which he could have done so in his port of registration.

Registered employees entitled to payment of the paid holiday shall receive payment of 8 hours at the basic straight time rate of pay regardless of whether or not they work. When registered men entitled to a paid holiday perform work on such holiday, their additional payment for working shall be as prescribed in Section 6.

Registered men, not entitled to a paid holiday, and non-registered men who perform work on any of the holidays listed above shall be paid for working as prescribed in Section 6.

Other holidays not enumerated above shall be observed as per Section 5.1 of the present Agreement.

NOTE: The foregoing Sections:
Section I Wages
Section II Pay Guarantee Plan
Section III Pensions
Section IV Welfare
Section V Vacations
Section VI Holidays
constitute the complete economic settlement between the parties for this two year Agreement.

GENERAL PROVISIONS APPLICABLE TO THE PACIFIC COAST LONGSHORE AND CLERKS AGREEMENT

(A) *Mediation/Arbitration Process.* This Agreement to be effective June 9, 1973, however, beginning June 11, 1973 the parties will continue bargaining to reach agreement on unresolved issues. Under the heading of unresolved issues are only those specific proposals and counterproposals made by the parties and still not settled as of this date.

On June 18, 1973 any unresolved issues outstanding will be discussed in a negotiations-atmosphere in the presence of the Mediator/Arbitrator.

On June 25, 1975 any unresolved issues still outstanding will be presented to the Arbitrator for final and binding decision by him. The Arbitrator will be required to issue his decision on any issue presented to him no later than June 30, 1973.

If any issues involving steady men are submitted to arbitration, it is agreed that the Arbitrator shall have neither the power nor the authority to delete Section 9.43 of the PCLCD or Section 5 of the Crane Supplement; it is further agreed that in deciding any issues under Section 9.43 and Section 5 of the Crane Supplement, the Arbitrator shall have the same authority as he had in deciding Section 9.43 and Section 5 issues at the conclusion of the 1971-72 negotiations.

(B) *Ratification.* This Memorandum of Understanding is subject to ratification by both parties.

(C) *Governmental Agencies Approvals.* Pension, Welfare and Pay Guarantee Plans are all subject to and conditional upon receipt of satisfactory tax rulings from appropriate Federal and state agencies. If unsatisfactory rulings are received, the parties will meet to make required changes in the Plan(s) to comply with the rulings.

(D) *Term of Agreement.* Amend Section 20.1 by changing the termination date to 8:00 A.M. July 1, 1975.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, on behalf of itself and all longshore and clerks locals in California, Oregon and Washington:

/s/ Harry Bridges

Dated: June 9, 1978

PACIFIC MARITIME ASSOCIATION
on behalf of its members:

/s/ Ed J. Flynn

SUPREME COURT OF THE UNITED STATES

No. 76-938

FEDERAL MARITIME COMMISSION, et al., PETITIONERS

v.

PACIFIC MARITIME ASSOCIATION, et al.

ORDER ALLOWING CERTIORARI. Filed February 28, 1977

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1977 234181 1